

(19,899.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 397.

THE MICHIGAN CENTRAL RAILROAD COMPANY,  
APPELLANT,

*vs.*

PERRY F. POWERS, AUDITOR GENERAL OF THE STATE  
OF MICHIGAN

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
WESTERN DISTRICT OF MICHIGAN.

INDEX.

	Original.	Print.
Bill of complaint .....	1	1
Exhibit A—Affidavit of Amariah F. Freeman .....	33	21
D—Affidavit of Jacob Dolf .....	36	22
C—Affidavit of Henry W. Magoon.....	38	23
B—Affidavit of Ira T. Sayre.....	39	24
E—Answer in case of Board of Education of the City of Detroit <i>vs.</i> State Board of Assessors.....	42	25
Answer.....	52	31
Amendment to answer.....	92	57
Stipulation applying testimony taken in the Michigan Central case to other cases.....	94	58
Evidence for the complainant .....	95	59
Testimony of Fred M. Twiss.....	95	59
Wm. T. Dust.....	110	69
James C. McLaughlin.....	128	81
A. F. Freeman.....	165	106



# INDEX

	Original.	Print
Testimony of F. O. Gullifer.....	177	114
A. F. Freeman (recalled).....	185	121
Ira T. Sayre.....	221	145
Samuel S. Bibbins.....	231	152
A. H. Rolph.....	243	160
Arthur Patriarche.....	257	170
T. J. G. Bolt.....	284	187
William Casey.....	302	200
Herbert E. Stone.....	323	214
Fred M. Twiss (recalled).....	330	219
W. G. Davidson.....	332	220
Henry W. Magoon.....	338	224
B. F. Burtlass.....	356	236
J. N. O'Boyle.....	358	237
Godfrey Jaeger.....	364	240
F. O. Gullifer (recalled).....	373	246
J. N. O'Boyle (recalled).....	374	247
Arthur E. Delf.....	375	247
F. O. Waldo.....	402	265
Extracts from reports of several railroad companies.....	405	266
Testimony of F. O. Gullifer (recalled).....	422	278
Extracts from report of chief statistician for manufactures.....	424	279
Exhibit F—Proceedings of State board of equalization.....	429	281
Statement of Mr. C. A. Blair.....	429	281
Letter, Secretary to Attorney General, August 23, 1901.....	431	282
Letter, Attorney General to Secretary, September 4, 1901.....	432	283
Letter, Auditor General to Attorney General, August 25, 1901.....	437	287
Letter, Attorney General to Auditor General, September 16, 1901.....	438	287
Communication from State board of tax commissioners.....	441	288
Tables showing the percentage which the assessment of the property of each township bears to the actual value thereof, &c.....	452	295
Supervisor's equalization—1901, &c.....	453	296
Tabulation of the assessed and equalized valuation, &c.....	481	333
Table showing the valuation of taxable property as equalized in 1901.....	482	334
Exhibit C—Report of boards of December 15, 1902.....	484	337
Act No. 154 of 1899.....	485	337
Statistical table No. 1.....	505	351
Statistical table No. 2.....	507	353
Complainant rests.....	511	357
Evidence for defendant.....	512	357
Message of Governor Pingree, 1897.....	512	357
Testimony of Clarence J. Mears.....	536	373
Offers and objections.....	551	381

# INDEX.

III

	Original.	Print
Testimony of Bruce O'Dell.....	557	384
George L. Lewis.....	572	394
Bruce O'Dell (recalled).....	581	399
Harry D. Norris.....	584	401
Thomas Friant.....	614	417
James C. McLaughlin (recalled).....	639	431
William T. Dust (recalled).....	650	437
James Walker (recalled).....	661	444
Evidence for complainant.....	682	456
Testimony of Charles B. Mersereau.....	682	456
Evidence for defendant.....	692	462
Testimony of John J. Hubbell.....	692	462
Testimony of John J. Hubbell (recalled).....	694	463
Certified copy of articles of association of the Thompson Lum- ber Co., Ltd.....	697	465
Certified copy of articles of association of the F. & F. Lumber Co., Ltd.....	704	468
Testimony of Glenn L. Williams.....	708	470
Letter of U. S. Webb, attorney general of Cal., Feb. 3, 1904....	715	473
Letter of Wm. H. Alford, February 4, 1904.....	717	475
Testimony of Frank W. Blair.....	719	476
Evidence for complainant.....	731	483
Testimony of F. O. Gullifer (recalled).....	731	483
Exhibit F—Extracts from report of State board of equalization for 1901.....	732	483
Motion to strike Exhibit F from record.....	740	489
Evidence for defendant.....	741	489
Table—Physical appraisal of railroad properties.....	741	489
Testimony of A. J. Burt.....	744	491
James E. Howard.....	748	494
Henry C. Adams.....	750	494
Henry C. Adams (recalled).....	813	542
Thomas L. Greene.....	826	551
Frederick J. Lisman.....	847	564
Clarence H. Wildes.....	856	572
George F. Lord.....	863	577
Melville W. Thompson.....	864	577
Boston stock exchange lists.....	865	579
Testimony of Melville W. Thompson (recalled).....	873	587
Melville W. Thompson (recalled).....	909	611
Melville W. Thompson (recalled).....	909a	612
James Walker (recalled).....	910	612
Assessment roll for 1903.....	954a	641
Evidence for complainant.....	955	644
Testimony of Harry C. Snelling.....	955	644
James Marwick.....	959	649
Constant A. Andrews.....	967	654
Charles F. Cox.....	968	654
Thomas F. Woodlock.....	975	659
Emory R. Johnson.....	984	667
George E. Comstock.....	1002	678

	Original.	Print
Recapitulation of Exhibits 2 and 3 .....	1005	680
Testimony of George H. Russell. ....	1013	690
Elwood T. Hance. ....	1017	693
Truman H. Newberry. ....	1021	695
H. D. Walbridge .....	1025	698
J. H. Simpson .....	1029	700
Exhibit 1—First annual report of the Pere Marquette R. R. Co., December 31, 1900. ....	1046	713
2—Second annual report of the Pere Marquette R. R. Co., December 31, 1901. ....	1074	738
3—Third annual report of the Pere Marquette R. R. Co., December 31, 1902. ....	1108	769
Evidence for defendant. ....	1142	801
Testimony of Henry C. Adams (recalled). ....	1142	801
M. E. Cooley. ....	1166	818
T. H. Hinchman (recalled). ....	1169	822
James Walker (recalled). ....	1172	825
W. M. Thompson (recalled). ....	1173	825
Opinion .....	1174	825
Decree. ....	1214	854
Claim and allowance of appeal .....	1215	854
Assignment of errors. ....	1217	855
Bond on appeal. ....	1225	859
Citation and acceptance of service of same. ....	1228	860
Stipulation as to record on appeal. ....	1230	861
Clerk's certificate. ....	1232	861

- 1 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
 vs.  
 PERRY F. POWERS, Defendant. }

Bill of Complaint.

O. E. Butterfield, solicitor for complainant.  
 Henry Russel, Ashley Pond, of counsel.

- 2 The Circuit Court of the United States, for the Western District of Michigan, Southern Division. In Equity.

To the honorable the judge of the circuit court of the United States for the western district of Michigan :

Your orator, The Michigan Central Railroad Company, in behalf of itself and of all other corporations whose names appear upon the alleged tax rolls hereinafter mentioned, who shall in due time come in and seek relief by and contribute to the expenses of this suit, files this bill of complaint against Perry F. Powers, the duly elected, qualified and acting auditor-general of the State of Michigan, and respectfully shows and alleges :

1. That your orator is and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of act No. 42 of the session laws of the State of Michigan of 1846 and the laws of the State of Michigan providing for the organization of railroad companies; that it owns and operates, and since 1901 has owned and operated a railroad within the State of Michigan; that its property in the State includes a large amount of lands and real estate;

That it operates, manages and control the railroad property of the following corporations, a portion of which said property is situated within the State of Michigan, and is obliged by agreement with the respective companies to pay all legal taxes levied and assessed by the State of Michigan upon the property of said companies, or either of them :

- 3 Battle Creek & Sturgis Railway Company ;  
 Bay City & Battle Creek Railway Company ;  
 Buchanan & St. Joseph River Railroad Company ;  
 Canada Southern Bridge Company ;  
 Detroit & Bay City Railroad Company ;  
 Detroit, Delray & Dearborn Railroad Company ;  
 Grand River Valley Railroad Company ;  
 Jackson, Lansing & Saginaw Railroad Company ;  
 Kalamazoo & South Haven Railroad Company ;

Michigan Air Line Railroad Company ;  
 Michigan, Midland & Canada Railroad Company ; and  
 Toledo, Canada Southern & Detroit Railway Company ;  
 and that Perry F. Powers, defendant herein, is a resident of the city  
 of Cadillac, in the county of Wexford, in the State of Michigan, in  
 the said district, and is a citizen of the State of Michigan and of the  
 western district thereof, and that he was heretofore duly elected  
 auditor-general of Michigan, has duly qualified as such officer, and  
 is now in possession of said office and discharging the duties thereof.

2. That on or about February 1st, 1903, acting as the State board  
 of assessors of Michigan, under and by virtue of the alleged authority  
 of an act of the legislature of said State known as act No. 173 of the  
 public acts of 1901, approved May 27, 1901, Amariah F. Freeman,  
 William T. Dust, Ira T. Sayre and James C. McLaughlin, delivered  
 to said defendant an alleged tax roll upon which they had placed  
 and described the property of your orator and of the corporations  
 hereinbefore mentioned, and of others, and had made an assessment  
 of the property of your orator and of such others and had levied  
 what said Freeman, Dust, Sayre and McLaughlin and said defend-  
 ant claimed to be, and intended and proposed to enforce against  
 your orator and such others as, a tax upon the property of your  
 orator and such others ; that the assessment so placed upon

4 the property of your orator and the corporations hereinbefore  
 mentioned were as follows :

Michigan Central Railroad Co.....	\$27,500,000 ;
Battle Creek & Sturgis Ry. Co.....	290,000 ;
Bay City & Battle Creek Ry. Co.....	150,000 ;
Buchanan & St. Jos. River Railroad Co.....	10,000 ;
Canada Southern Bridge Co.....	300,000 ;
Detroit & Bay City Railroad Co.....	3,500,00- ;
Detroit, Delray & Dearborn Railroad Co....	50,000 ;
Grand River Valley Railroad Co.....	1,400,000 ;
Jackson, Lausing & Saginaw Railroad Co.....	4,500,000 ;
Kalamazoo & South Haven Railroad Co.....	325,000 ;
Michigan Air Line Railroad Co.....	1,875,000 ;
Michigan, Midland & Canada R. R. Co.....	100,000 ;
Toledo, Can. Sou. & Detroit Ry. Co.....	5,000,000 ;

that the tax so placed upon the property of your orator and the cor-  
 porations hereinbefore mentioned was as follows :

Michigan Central R. R. Co.....	\$376,448.88 ;
Battle Creek & Sturgis Ry. Co.....	3,969.82 ;
Bay City & Battle Creek Ry. Co.....	2,053.36 ;
Buchanan & St. Jos. River R. R. Co.....	136.89 ;
Can. Sou. Bridge Co....	4,106.72 ;
Detroit & Bay City R. R. Co.....	47,911.68 ;
Detroit, Delray & Dearborn R. R. Co.....	684.45 ;
Grand River Valley R. R. Co.....	19,164.67 ;

Jackson, Lansing & Saginaw R. R. Co.....	61,600.73 ;
Kalamazoo & So. Haven R. R. Co.....	4,448.94 ;
Michigan Air Line R. R. Co.....	25,668.97 ;
Michigan, Midland & Canada R. R. Co.....	1,368.91 ;
Toledo, Can. Sou. & Detroit Ry. Co.....	68,445.25 ;

and that attached to said alleged tax roll and made a part thereof by said Freeman, Dust, Sayre and McLaughlin, was a certificate, of which the following is a copy :

5 "STATE OF MICHIGAN, } ss:  
County of Ingham, }

We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, refrigerator and fast freight lines, and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal and other purposes levied through the State during the present year as determined by us.

In witness whereof, the undersigned, a majority of the members of the State board of assessors for the State of Michigan, have signed this certificate at the State capitol, in the city of Lansing, State of Michigan, this twenty-ninth day of January, A. D. 1903.

Members of the State Board of Assessors in and for the State of Michigan. { AMARIAH F. FREEMAN.  
WILLIAM T. DUST.  
IRA T. SAYRE.  
JAMES C. McLAUGHLIN."

Your orator further says that until the decision of the supreme court of Michigan, hereinafter mentioned, defendant claimed that said taxes so extended upon said assessment roll, including the tax extended thereon against the property of your orator, constituted a debt from the several companies against which they were extended, including your orator, to the State of Michigan; and intended to proceed, and but for said decision of the supreme court of Michigan and restraint by this court would have proceeded to enforce said alleged tax against the property of your orator and of such others by the measures and proceedings provided for collection of such taxes in said act No. 173 of the public acts of 1901.

6 Your orator further shows and alleges that the average rate of taxes mentioned in said foregoing certificate, dated January 29th, 1903, and theretofore ascertained and determined by said Freeman, Dust, Sayre, and McLaughlin, was \$13.68905 per one thousand dollars of the value of the general properties of the State as determined by them; with average rate of taxation said Free-

man, Dust, Sayre, and McLaughlin determined by taking the whole amount of taxes levied upon the property of the State assessed under other laws than said act No. 173, as derived from the records of taxation for the State and the several counties, townships, school districts and municipalities in the State for the year 1902, and as so found by them to be the sum of \$23,476,733.55, and dividing the same by the sum of \$1,715,000,000, which was found by said Freeman, Dust, Sayre, and McLaughlin to be the total true cash value of the property upon which said ad valorem taxes were assessed for said year 1902 for State, county, township, school and municipal purposes; and your orator further says that in ascertaining said average rate of \$13.68905 per one thousand dollars of value said Freeman, Dust, Sayre, and McLaughlin construed said act No. 173 and the constitution of the State of Michigan as authorizing them to equalize the assessed valuations put upon the property of your orator and others on said alleged tax roll with the assessed valuations placed upon other property generally in the State upon which ad valorem taxes were levied, so that the value of the other general property of the State used in computing said average rate of taxation, as aforesaid, should be the aggregate actual cash value of all such other general property in the State; that the aggregate assessed valuation of the general property of the State as assessed by the assessing officers of the several municipalities of the State was \$1,418,251,858, or \$296,748,942 less than the actual or true cash value thereof, as found by said Freeman, Dust, Sayre and McLaughlin as aforesaid.

7 Your orator further shows and alleges that after the aforesaid proceedings and after the first day of February, 1903, such proceedings were had in the supreme court of the State of Michigan, in a certain cause wherein the board of education of the city of Detroit was the petitioner and the State board of assessors was respondent, that the constitution of Michigan and the said act No. 173 were held by said supreme court to confer upon said State board of assessors no discretion whatever in the determination of the property value used as a divisor in the calculation of the average rate of taxation to be applied under said act No. 173, and to limit said State board of assessors in their ascertainment of such average rate of taxation to the ministerial function of dividing the aggregate of the taxes levied in the State for the purposes aforesaid by the aggregate assessed valuation of the other general property of the State, assessed by the various local assessing officers in said State and not under said act No. 173; that such actual assessed valuation for the year 1902 of the general property of the State assessed otherwise than under said act No. 173 was \$1,418,251,858, which if used as a divisor of the ad valorem taxes found by said Freeman, Dust, Sayre, and McLaughlin to be levied on said property would give as the average rate of taxation \$16.55329 per one thousand dollars of assessed valuation; and that said supreme court of Michigan thereupon ordered a writ of mandamus to issue, commanding said State



board of assessors to re-assemble and re-ascertain the average rate, in accordance with such decision of said court, and with such state of the facts, as to the actual assessed valuation of the general property of the State assessed otherwise than under said act No. 173.

Your orator further shows and alleges that after such decision of the supreme court of Michigan, said Freeman, Dust, Sayre, and McLaughlin reconvened as said State board of assessors and proceeded in accordance with said decision to re-ascertain and determine the average rate of taxation, and did so ascertain and determine it at said amount of \$16.55329 on each thousand dollars of assessed valuation; that said Freeman, Dust, Sayre, and McLaughlin thereupon adopted and signed and promulgated the following statement:

"Statement of the method pursued by the State board of assessors in re-ascertaining and re-determining, in accordance with the provisions of act No. 173 of the public acts of 1901, section 11 of art. XIV of the constitution, and the order of the supreme court of the State of Michigan, the average rate of taxation herein recorded.

The said State board of assessors, in accordance with and within the time fixed by said act No. 173, required and received from the several counties and municipalities throughout the State, the reports and information provided for and required by said act 173 of the public acts of 1901; and after the determination by the said supreme court that the taxes previously levied by it under the provisions of said act were illegal for the reason that such average rate was not ascertained and determined according to law, proceeded thereon in accordance with the provisions of said act, constitutional provision, and the order of said court to re-ascertain and re-determine the average rate of taxation throughout the State upon property (other than that subject to assessment by the State board of assessors under said act) upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes for the year 1902 as follows:

(a.) It ascertained from the said reports and information so received that the aggregate ad valorem taxes levied in the several municipalities and the several counties of the State for State, county, township, school and municipal purposes (not including taxes levied for any other purposes) for the year 1902 was the sum of \$23,476,733.55.

(b.) It examined and considered the said reports and information so required and received and from the same ascertained and determined the aggregate assessed valuation of all the property in the State upon which ad valorem taxes were levied for State, county, township, school, and municipal purposes for the year 1902 (other than that subject to assessment by the State board of assessors) as assessed by the several assessing officers of the several municipalities of the State to be the sum of \$1,418,251,858.



(c.) The average rate was then determined to be \$16.55329 on each \$1,000 of assessed valuation, by dividing the total taxes so levied in the amount so determined by the total assessed valuation of property subject to ad valorem taxes for State, county, township, school and municipal purposes found as aforesaid.

Done at the city of Lansing, Mich., this 6th day of May, 1903.

AMARIAH F. FREEMAN.  
IRA T. SAYRE.  
WILLIAM T. DUST.  
J. C. McLAUGHLIN."

Your orator further shows that said Freeman, Dust, Sayre and McLaughlin, acting as the State board of assessors of Michigan, under and by virtue of the alleged authority of said act No. 173 of the public acts of 1901, thereupon, on or about May 6th, 1903, prepared an alleged new tax roll upon which they placed and described the property of your orator and of others and made an alleged assessment of the property of your orator and of such others and levied what said Freeman, Dust, Sayre and McLaughlin and said defendant claims to be, and what is, if said act of the legislature of the State of Michigan and said proceedings thereunder are valid, a tax upon the property of your orator and of such others; that the assessment so placed upon the property of your orator is the same as was made and stated in said first tax roll prepared by said Freeman, Dust, Sayre and McLaughlin, and the tax so placed upon the property of your orator and said corporations in such new alleged tax roll is as follows:

Michigan Central R. R. Co.....	\$455,215.48;
Battle Creek & Sturgis Ry. Co.....	4,800.45;
Bay City & Battle Creek Ry. Co.....	2,482.99
Buchanan & St. Jos. River R. R. Co.....	165.53;
Canada Southern Bridge Co.....	4,965.99;
Detroit & Bay City R. R. Co.....	57,936.51;
Detroit, Delray & Dearborn R. R. Co.....	827.66;
Grand River Valley R. R. Co.....	23,174.60;
10 Jackson, Lansing & Saginaw R. R. Co.....	74,489.81;
Kalamazoo & South Haven R. R. Co.....	5,379.82;
Michigan Air Line R. R. Co.....	31,037.42;
Michigan, Midland & Canada R. R. Co.....	1,655.33;
Toledo, Canada Sou. & Detroit Ry. Co.....	82,766.45;

that by the proceedings aforesaid the taxes sought to be levied upon the property of your orator and the other companies aforesaid are increased more than \$125,00000, as compared with those levied upon the first alleged tax roll upon the same, or increased from \$616,007.27 to \$744,898.04; that attached to said alleged tax roll and made a part thereof by said Freeman, Dust, Sayre and McLaughlin are their aforesaid statement concerning the manner of

their re-ascertaining and determining the average rate of taxation, and also a certificate, signed by said Dust, McLaughlin and Freeman, of which the following is a copy:

"STATE OF MICHIGAN, }  
County of Wayne, } ss:

We do hereby certify that in accordance with the provisions of act 173 of the public acts of 1901 and the order of the supreme court of the State of Michigan, we have made and prepared a duplicate of the original assessment roll made by us in accordance with the provisions of said act 173 of 1901, upon which was set down all the property of railroad companies, express companies, union station and depot companies, car-loading, stock car, refrigerator and fast freight line and other car companies liable to be taxed by the State board of assessors, and that we estimated the value of said property and extended it upon such original assessment roll at what we believe to be the true cash value thereof, and that we have assessed the taxes upon such duplicate assessment roll at the average rate of taxes for State, county, township, school and municipal purposes levied throughout the State during the year 1902, as re-ascertained and re-determined by us in accordance with the provisions of said act and said order of said supreme court.

11 In witness whereof, the undersigned, a majority of the members of the State board of assessors for the State of Michigan have signed this certificate this ninth day of May, A. D. 1903.

WM. T. DUST,  
J. C. McLAUGHLIN,  
AMARIAH F. FREEMAN,  
Members of the State Board of Assessors."

Your orator further shows and alleges that the assessment made against the property of your orator by said Freeman, Dust, Sayre and McLaughlin in both the alleged tax rolls prepared by them, as aforesaid, was determined and found by them to be the true cash value of the property of your orator, and the full actual value thereof; that, as your orator is informed and believes, the assessment made by the assessing officers of the State other than said State board of assessors upon the general property of the State assessed otherwise than under said act No. 173 in 1902 were and for many years before regularly had been much less than the true cash and actual value of such property, and not over eighty per cent. of such true cash and actual value; that said Freeman, Dust, Sayre and McLaughlin, in their preparation and adoption of the first mentioned tax roll, found and determined such assessments upon the general property of the State assessed by others than themselves to have been in 1902 much less than the true cash and actual value of the property, and about eighty per cent. of such true cash and actual

value; that, as your orator is informed and believes, it was in 1902 and for many years theretofore had been the custom and general practice and purpose and intent of the assessing officers of the State generally to make their assessments for the purposes of taxation less than the true cash and actual value of the assessed property, and

12 that while such under-assessment made by the local assessors in the various counties, towns, cities, school districts and other assessing districts of the State varied in different districts, being in many instances as low as fifty per cent. of the true cash and actual value, it was the habit and purpose of the assessors, in 1902 and prior years, to maintain as to the property of different owners in the same assessing district the same general ratio of assessed to full value, and such ratio seldom exceeded eighty per cent.; and your orator avers that such general under-assessment of the property of the State assessed otherwise than under said act No. 173 in 1902 and in prior years was not the result of accident, but that the assessment made in the year 1902 by the assessing officers generally, and in a great number of the different and various assessment districts in the State of the property of the State assessed otherwise than under said act No. 173, were intentionally made by them at less than the true cash value of the property assessed, and that the assessment so made did not express the real judgment of the assessing officers making the assessment in respect to the true cash value of the property assessed by them, and thereby a greater rate and burden of taxation was put by said board of assessors upon the property of your orator by their said action of May 6th than would have been put thereon if such assessment had been made by said assessing officers as required by law, to the extent, as your orator believes, of twenty per cent. of the taxes levied upon the property of your orator by said State board of assessors, which more fully appears from the affidavits and exhibits hereto attached, marked Exhibits A, B and E, which your orator prays may be taken as a part of this bill, and to such extent of such tax the collection thereof would deprive your orator of its property without due process of law, and deny to your orator the equal protection of the laws, in contravention of the provisions of the 14th amendment of the Constitution of the United States.

Your orator further shows and alleges that the State board of equalization at its meeting in the year 1901, being its most  
13 recent session, ascertained and determined the aggregate value of the general property of the State not assessed under act No. 173 upon which ad valorem taxes were assessed to be the sum of \$1,578,100,000, whereas the aggregate assessed valuation of said property in the same year was the sum of \$1,335,109,918, or only 84.6 per cent. of its value as determined by the State board of equalization.

A copy of said proceedings of said State board of equalization is hereto attached, marked Exhibit F, which your orator prays may be taken as a part of this bill.

Your orator further shows and alleges that all of the proceedings of said Freeman, Dust, Sayre and McLaughlin in re-ascertaining the average rate of taxation, as aforesaid, and in making their second alleged duplicate tax roll and in all others of their transactions subsequent to the said decision of the supreme court of Michigan were without any notice to your orator or the others whose property purports to be assessed in said tax roll, and were without any knowledge on the part of your orator or of such others as to the time or place of such proceedings; and that neither your orator nor any of such others at any time appeared or was present or represented in any way at any of said proceedings; and your orator further says that at the time of the hearing of your orator and the others mentioned in said tax rolls in the course of the proceedings which resulted in said first alleged tax roll, said Freeman, Dust, Sayre and McLaughlin had already made their first determination of the average rate of taxation and had already entered such average rate of taxation upon their records, and that said Freeman, Dust, Sayre and McLaughlin had in their aforesaid first determination of the average rate of taxation fixed it with a view to making the proper equalization between the assessments made by them under said act No. 173 upon the property of your orator and such others mentioned in said tax rolls and the general property of the State assessed otherwise than under said act No. 173, and therefore

14 declined to enter upon any question or consider any evidence concerning an equalization of their assessments with the other assessments in the State by an appropriate reduction of the assessed valuations to be made by them; that the denial by the supreme court in its said decision of the existence of any authority in said Freeman, Dust, Sayre and McLaughlin to increase to what they found was its true cash value, the valuation of the property generally in the State, imposed upon the property of your orator and said other companies a tax about one-fourth greater than is imposed upon property generally in the State of equal value.

Your orator further shows and alleges that since May 6th, 1903, said Freeman, Dust, and McLaughlin, acting as a majority of the State board of assessors of the State of Michigan under and by virtue of the pretended authority of said act No. 173, have delivered to the defendant their last aforesaid tax roll, upon which the property of your orator and such others is placed and described, as aforesaid, and a pretended assessment of the property of your orator and such others is made and a pretended tax upon such property is levied, in the amount as to your orator's property already stated; and that defendant claims that the taxes so extended upon said last tax roll, including the tax extended thereon against the property of your orator, constitutes a debt from the several companies against which such tax is extended, including your orator, to the State of Michigan, and constitutes a lien upon the property of your orator and such others, real, personal and mixed, within the State of Michigan, having precedence of all demands, judgments, as-

signments by warranty deed or otherwise, or decrees against your orator or such others, and that said lien and debt may be by said defendant enforced by seizure and sale of said property or such portions thereof as may be necessary to satisfy the same at any

time hereafter; and your orator further says that the  
15 said alleged lien constitutes a cloud upon the title of your orator and of such others against whom said alleged taxes have been extended, as aforesaid, to their respective properties, including their said lands and real estate, and that said defendant, unless restrained by this court, will proceed forthwith, as your orator is informed and believes, to enforce said alleged tax and said alleged lien against the property of your orator and of such others by distress and by seizure and sale of such property, thereby causing your orator and such others irreparable injury. Your orator avers that there is no provision of law in the State of Michigan or otherwise by virtue of which your orator or either of such corporations may bring an action at law or institute proceedings against the State of Michigan to recover back moneys which it or either of said corporations may pay or which may be collected from it or either of them for or on account of said taxes.

Your orator alleges that the said pretended assessments and taxes made in said second alleged tax roll against the property of your orator and the others mentioned in such tax roll are invalid for the reasons, in addition to the other reasons set forth in subsequent paragraphs of this bill, that they were made without any opportunity to your orator or such others to appear or be heard concerning them and without any actual appearance or hearing of your orator or such others concerning them, and in contravention not only of the constitution of Michigan but also of the provisions of the fourteenth amendment to the Constitution of the United States, requiring that no person shall be deprived of his property without due process of law, and that no State shall deny to any person the equal protection of the laws, and further that the aforesaid proceed-

ings of the assessing and taxing officers of Michigan and said  
16 pretended assessments and taxes against the property of your orator and said others founded thereon result in an attempted taxation of the property of your orator and such others at about one-quarter more in proportion to its value than other property generally is taxed in the State, and thereby contravene not only the constitution of the State of Michigan but also those provisions of the fourteenth amendment to the Constitution of the United States, already mentioned in this paragraph, and that to the extent at least that such pretended taxes are thus greater than the taxes upon property generally of equal value, the said proceedings are null and void.

3. Your orator further shows that neither it nor any of the corporations hereinbefore mentioned, have, nor since 1901, have had any property in the State of Michigan, except in the counties of

Wayne.

Berrien.

Lapeer.

Monroe.

Ingham.

Genesee.

Washtenaw.	Eaton.	Tuscola.
Jackson.	Barry.	Bay.
Calhoun.	Kent.	Gladwin.
Branch.	Clinton.	Ogemaw.
Kalamazoo.	Saginaw.	Roscommon.
St. Joseph.	Shiawassee.	Crawford.
Van Buren.	Macomb.	Otsego.
Cass.	Oakland.	Cheboygan.

and that there are and since 1901 have been fifty-two counties and very numerous other political subdivisions in the State of Michigan (including cities, towns, villages, school districts and road districts) in which neither your orator nor such other corporations have, nor since 1901, have had any property whatsoever.

17 4. Your orator is advised and submits that said act under which said Freeman, Dust, Sayre, and McLaughlin proceeded, as aforesaid, and defendant proposes to proceed, as aforesaid, is repugnant to the provisions of article XIV of the amendments to the Constitution of the United States, in that its enforcement would deprive your orator and such others against whom the aforesaid proceedings have been had and are intended, of their property without due process of law, and would deny to your orator and such others the equal protection of the laws, in the following several respects, to-wit:

(a.) Said act applies to corporations doing business as railroad companies, union station and depot companies, express companies, car loaning companies, refrigerator and fast freight line companies, and does not apply to joint stock companies or associations, partnerships or natural persons and other corporations having property of the same sort in the same business and put to the same uses under identical conditions within the State; and your orator avers that at the time of the passage of said act No. 173, there were and at all times since there have been in Michigan, railroads owned and operated by others than corporations, and railroad properties owned by unincorporated associations and partnerships and individuals which were of the same sort and engaged in the same business and put to the same uses as the railroad properties of corporations enumerated in said act for taxation thereunder; and that at the time of the passage of said act there were and at all times since there have been in Michigan, railroads and railroad properties of the same kind as the railroads and railroad properties of corporations enumerated for taxation under said act, but belonging to corporations other than railroad corporations, and not themselves subject to taxation under said act; and that there were at the time of the passage of

18 said act and ever since have been not only corporations but also unincorporated associations and partnerships engaged in the same kind of express business in the State of Michigan, and having and using in the same way in such express business the same kind of property; and that at the time of the passage of said act No. 173 there were and at all times since there have been in the State of Michigan not only corporations of the various sorts enumerated



in said act for taxation by said State board of assessors, but also unincorporated associations and partnerships and individuals engaged in the same sort of business and having and using in the same way in such business the same kind of property, as more fully appears by affidavits hereto attached, marked Exhibits C and D, which your orator prays may be taken as part of this bill.

(b.) Said act does not make a classification of property of business for purposes of taxation, founded upon real differences of property or business such as would warrant the classification, but arbitrarily and unreasonably separates the companies enumerated in the act from others engaged in essentially the same kind of business and having essentially the same kind of property, and said act makes a positive and direct discrimination between persons and property of the same kind in essentially the same kind of business, making a classification on the basis simply of a distinction in ownership; and as instances of such discrimination your orator shows (without intending thereby to limit its general charge of discrimination) that street railway companies having railways running in and between different places and carrying mail, express and freight, as well as passengers and commonly known as interurban railways, as well as tram railroad companies, railroad bridge companies, railroad tunnel companies and sleeping car companies, are not included in said act No. 173,

19 although at the time of the passage thereof companies and corporations of all such several sorts were doing business and had property in such business, and ever since have been doing business and had property in such business, in the State of Michigan, and although the business of said several companies and corporations not included in said act was at the time of the passage of said act and ever since has been of essentially the same character as that of the corporations included in said act; and although the property of the said several companies and corporations not included in said act was at the time of the passage of said act and ever since has been of essentially the same sort and put essentially to the same use as that of the property of the corporations included in said act. As to sleeping car companies, your orator particularly avers that there were in the State of Michigan at the time of the passage of said act No. 173, and there ever since have been sleeping cars owned and used by railroad corporations in the course of their railroad business, and consequently within the terms of said act No. 173, while during all said time there have been sleeping cars owned and used in the State of Michigan by corporations and associations other than railroad corporations in the same way and for the same purposes and in the same sort of business as the sleeping cars owned and used by railroad corporations, as aforesaid; though the property of such sleeping car companies other than railroad corporations is not within the terms of said act.

(c.) Said act purports to authorize and would result in the application of a tax rate to the assessed value of the property of the several companies enumerated in said act different from and higher than

the tax rate applied to the property of others in the State of Michigan of the same actual and assessed value, situated in the same place and subject to the same political jurisdictions and existing under the same circumstances.

20 (d.) Under the provisions of said act the rate of tax to be imposed upon the property of the companies therein enumerated depends upon the collective result of proceedings of county, township, school and municipal boards, bodies and officials having only local jurisdiction and having no authority or power over property outside of their respective territorial jurisdictions, and within the limits of whose several jurisdictions your orator neither has nor since 1901 has had any property whatsoever; and such county, township, school and municipal boards, bodies and officials neither have nor could have any legislative or administrative power or authority over the property of your orator or others outside of their respective territorial jurisdictions; and such local boards, bodies and officials do not represent your orator or the property belonging to it situated wholly beyond their jurisdictions, and are chosen by and act solely for the persons and property within their local jurisdiction; and your orator and others outside of their jurisdiction have no right to appear or be heard before such local boards, bodies or officials, and your orator and others beyond their respective jurisdictions have no relief from their action at law or in equity.

(e.) No opportunity is given to your orator or others, and they have no right, to appear or be heard before any of the several county, township, school or municipal boards, bodies or officials within whose territorial jurisdiction your orator and such others have no property, upon or concerning any action of such board, bodies or officials upon which depends the average rate of tax applicable under the terms of said act to the property of your orator and such others. Said act makes the amount of tax to be imposed upon the property of your orator and such others to depend upon the action of said county, township, school and municipal boards, bodies

21 and officials, and in such action no account is taken, or can be taken, of the rate of taxation, or the amount of taxation which is or which ought to be imposed upon the property of your orator and such others because of the needs of the State, or the public interests, in respect to the purpose to which, under the terms of said act No. 173, the moneys raised by such taxation are to be devoted.

(f.) No opportunity is given under the terms of said act to your orator or others for any hearing upon the question of the rate of taxation, or the elements required by said act to enter into the average rate therein called for.

(g.) Said law purports to authorize the imposition of taxes upon the property of your orator and such others without the exercise of any legislative judgment upon the rate of taxation to be imposed or upon the need of the State in any year of the amount of money to



be paid as taxes under said law for the purpose to which such money is to be devoted under the terms of said law.

(h.) Under the general laws of Michigan existing at the time when said act No. 173 was passed and ever since existing, the personal property of all inhabitants of Michigan other than the companies enumerated in said act No. 173 includes the credits of such persons for purposes of taxation, only so far as they exceed the amounts owed by such persons respectively; whereas said act No. 173 requires taxation of the credits of the companies therein enumerated, without any deduction whatever; and your orator avers that in the reports made by it to said State board of assessors in the year 1902, pursuant to the terms of said act No. 173, it declared and returned to said State board of assessors, as the fact was, that it had credits in the amount of two million, one hundred and eighty-seven thousand,

22      five hundred and thirty-four and 57/100 dollars (\$2,187,534.57), and that it had debits, being debts owing by it, in the amount of three million, one hundred and sixty-one thousand, three hundred and six and 66/100 dollars (\$3,161,306.66); that these reports and returns of your orator were before said Freeman, Dust, Sayre, and McLaughlin at the time of, and constituted parts of the data in the hands of said Freeman, Dust, Sayre, and McLaughlin concerning said assessments put by them upon the property of your orator; that the existence of said credits and debits was in no way disputed by or before said State board of assessors, and such credits were assessed by said Freeman, Dust, Sayre, and McLaughlin as an undivided part of the total property of your orator; and that, in obedience to the terms of said act No. 173, no deduction from the value of said credits or of any of the property of your orator was made on account of debits in the aforesaid alleged assessments of such property.

(i.) Said act permits and requires taxation in the State of Michigan of property belonging to companies therein enumerated which is situated outside of the State of Michigan.

(j.) Said act purports to treat and tax as if it were in the State of Michigan a portion of the property of railroad companies situated outside of Michigan and not used as a part of the railroad or in connection with the operation of a railroad, to be determined by the relation which the number of miles of main track within the State of Michigan of the company owning such property bears to the entire mileage of the main track of such railroad company both within and without Michigan.

23      (k.) Your orator is advised and submits that said act No. 173 is invalid, because it contravenes the provisions of the 14th amendment to the Constitution of the United States, which forbids the State to deprive any person of life, liberty or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws in this, viz: That the laws of the State provide for the equalization of the assessment of the property of other property owners who are not included within

the taxation imposed by said act No. 173, where such assessment affects the rate or amount of taxation to be imposed upon the property of such owners, to the end that none of such persons shall bear an unjust, unequal or unlawful rate or burden of taxation by reason of an improper, unjust, unequal or unlawful assessment of his property, or the property of others, while said act No. 173 contains no provision for and does not permit the equalization of the assessment of the property of your orator and said other companies included within said act and the assessment made upon the other property of the State, although the rate and amount of taxation to be imposed upon your orator and said other companies are determined by the assessment of said other properties of the State, and the assessment of the property of your orator and said other companies, and such rate and amount are affected by the improper, unjust, unequal or unlawful assessment of said other property of the State, and the property of your orator and said other companies, and by the inequality between the assessment of such other property and of the property of your orator and said other companies, and protection is thus afforded by the laws of the State to other property owners of the State against unlawful, unjust and unequal taxation, which is denied by said act No. 173 to your orator and said other companies.

5. Your orator is further advised and submits that said act  
24 No. 173 of the public acts of 1901 is invalid because, contrary to the provisions of article XIV. of the amendments to the Constitution of the United States, it deprives your orator and the other companies enumerated in it of their property without due process of law, and it denies to your orator and such other companies the equal protection of the laws; and your orator is further advised and submits that said act No. 173 is likewise contrary to section VIII. of article 1 of the Constitution of the United States in that it is an unlawful attempt to regulate commerce among the several States, your orator and many of the other companies in Michigan to which said act purports to apply having at the time of the passage of said act and ever since owned and operated its railroad in Michigan as part of a continuous railroad in many States on which at all times commerce between such States has been conducted and your orator and such other companies owning railroads in Michigan having at all times had both real and personal property of large amount and value in other States than Michigan which was not a part of or used in connection with their respective railroads.

6. Your orator is further advised and submits that said act No. 173 is repugnant to the provisions of section 4 of article IV. of the Constitution of the United States, by which the United States guarantee to every State a republican form of government; for the reasons, among others, set forth in subdivision (d) of division 4 of this bill.

7. Your orator is further advised and submits that if sections 10 and 11 of article XIV. of the constitution of Michigan, as amended by joint resolution during the extra session of the legislature of said

State held in the year 1900 and by vote of the people ratifying such amendment at the general election held in November, 1900, be so construed as to authorize the enactment of said act No. 173, then

25 said sections of the constitution of Michigan are repugnant to the provisions of article XIV. of the amendments of the Constitution of the United States, forbidding any State to deprive any person of property without due process of law or to deny to any person within its jurisdiction the equal protection of the laws; and, without limiting the general allegations just made, your orator specifies as reasons why said act, if enforced, would deprive your orator and the other companies enumerated in said act of property without due process of law and would deny to your orator and such others the equal protection of the laws the same grounds as are enumerated in subdivisions (a), (b), (c), (d), (e) (f), (g), (h) and (k) in division 4 of this bill.

8. Your orator is further advised and submits that if sections 10 and 11 of article XIV. of the constitution of Michigan, as amended in 1900 aforesaid, be construed so as to authorize the enactment of said act No. 173, then said sections of the constitution of Michigan are repugnant to the provisions of section 4 of article IV. of the Constitution of the United States, whereby the United States guarantee to every State a republican form of government; for the reasons, among others, set forth in subdivision (d) of division 4 of this bill.

9. Your orator is advised and submits that if said sections 10 and 11 of article XIV. of the constitution of the State of Michigan are held valid, then said act No. 173 is in violation of such sections of the Michigan constitution for each of the reasons set forth in subdivisions (a) and (b) in division 4 of this bill.

10. Your orator is advised and submits that if said sections 10 and 11 of article XIV. of the constitution of the State of Michigan are valid, then said act No. 173 violates those sections, and it also violates the provisions of section 32 of article VI. of said Michigan constitution, in that the stated provisions of the Michigan constitution require that your orator should have a hearing upon the question of the rate of taxation to be imposed upon its property, and said act gives no right of hearing to your orator before said State board of assessors or elsewhere concerning the rate of taxation upon the property of your orator and such others or concerning the elements required by said act to enter into such rate.

11. Your orator is advised and submits that said act No. 173 of the laws of 1901 violates section 10 of article XIV. of the constitution of the State of Michigan, authorizing the legislature to provide for the assessment of the property of corporations at its true cash value by a board of assessors, in that said act provides for the assessment of the property of certain corporations named in the act to the exclusion of all other corporations in the State, of which there are many.

12. Your orator is advised and submits that said act. No. 173 vio-

lates section 11 of article XIV. of the Michigan constitution, which requires the legislature to provide a uniform rule of taxation except upon property paying specific taxes.

13. Your orator is advised and submits that said act No. 173 violates the provision of section 12 of article XIV. of the constitution of the State of Michigan, requiring all assessments thereafter authorized to be on property at its cash value, and violates the provision of section 11 of article XIV of said constitution, requiring the legislature to provide a uniform rule of taxation except upon property paying specific taxes, in this, to-wit: that under act No. 206 of the public acts of 1893 of said State, which is the general tax law of the State, personal property includes for the purpose of  
27 taxation only the credits belonging to the inhabitants of Michigan over and above the amounts owed by them respectively, whereas said act No. 173 requires the companies therein named to be taxed upon their credits without any deduction.

14. Your orator is advised and submits that said act No. 173 violates section 14 of article XIV of the constitution of Michigan, which provides that every law which imposes, continues or revives a tax shall distinctly state the tax and the objects to which it is to be applied, and that it shall not be sufficient to refer to any other law to fix such tax or object.

If said act is authorized by the constitution of Michigan, then said constitution and said act contravene the provisions of the fourteenth amendment of the Constitution of the United States, in that said constitution of Michigan, and said act deny to your orator, and the companies to which said act applies the equal protection of the laws, for the reason that by said constitution of Michigan every law which imposes a tax upon the property in the State of all other corporations, companies, associations and persons is required to distinctly state such tax, while said act No. 173 does not distinctly state the tax which it imposes.

15. Your orator further shows that said Freeman, Dust, Sayre and McLaughlin, acting as such State board of assessors, construed said act No. 173 as authorizing the amount of all taxes levied in the State of Michigan for highway purposes during the year 1902 to be included in the dividend used in determining the average rate of tax required to be determined under said act, and did in their aforesaid attempted taxation of the property of your orator and others determine and use the average rate of tax applied by them to the property of your orator and others in accordance with their  
28 aforesaid construction of the act; and your orator is advised and submits that if said act is susceptible of such construction it violates section 11 of article XIV of the constitution of Michigan in that said section of the constitution does not authorize highway taxes to be included in the dividend used for the determination of such average rate, and in that said section of the constitution does not authorize the amount of highway labor taxes to be included in such dividend.

16. Your orator is advised and submits that said act No. 173 violates said sections 10 and 11 of article XIV of the constitution of the State of Michigan, in that it requires said State board of assessors to include as an element in the determination of the average rate of taxes, at which the property of your orator and such others is to be taxed under the terms of said act, ad valorem taxes for other purposes than State, county, township, school and municipal purposes; and your orator shows and alleges that said Freeman, Dust, Sayre and McLaughlin in their attempted taxation of the property of your orator and others, as aforesaid, did include as an element in their determination of the average rate of taxes, which in their said attempted taxation of the property of your orator and others they applied to such property, ad valorem taxes for other than State, county, township, school and municipal purposes.

17. Your orator is further advised and submits that said act No. 173 is repugnant to the constitution of the State of Michigan in that it purports to authorize the imposition of taxes upon the property of your orator and others without the exercise of legislative judgment upon the rate of taxation to be imposed or upon the need of the State in any year of the amount of money to be paid as taxes under said law, for the purposes to which such money is to be devoted under the terms of said law.

20 18. Your orator further shows and alleges that it has paid to the treasurer of the State of Michigan all taxes accruing to said State and payable heretofore or hereafter in the year 1903, according to the terms and provisions of section 3 of article 3 of act No. 198 of the Laws of the State of Michigan of 1873, as since amended, being compiler's section 6277 of the Compiled Laws of Michigan of 1897; which taxes paid by your orator were computed in accordance with said act No. 198 upon the business of your orator and of the corporations hereinbefore mentioned for the year 1902, and amount to the following sums of money:

Michigan Central R. R. Co.....	\$296,969.74;
Battle Creek & Sturgis Ry. Co.....	795.35;
Bay City & Battle Creek Ry. Co.....	386.98;
Buchanan & St. Jos. River R. R. Co.....	0.00;
Canada Southern Bridge Co.....	71.76;
Detroit & Bay City R. R. Co.....	33,013.23;
Detroit, Delray & Dearborn R. R. Co.....	.59;
Grand River Valley R. R. Co.....	13,408.65;
Jackson, Lansing & Saginaw R. R. Co.....	58,308.35;
Kalamazoo & So. Haven R. R. Co.....	2,467.72;
Michigan Air Line R. R. Co.....	9,640.16;
Michigan, Midland & Canada R. R. Co.....	187.59;
Toledo, Can. Sou. & Detroit Ry. Co.....	66,201.62;

and your orator further shows and alleges that it has no means of calculating or knowing what amount of tax it ought in equity and good conscience to pay to the State of Michigan in the year 1903

otherwise than according to the terms of said act No. 198, but your orator is ready and willing and offers to pay to the State of Michigan at once upon their ascertainment in proper manner any and all taxes that it ought to pay, if they exceed what it has already paid, as aforesaid.

30 19. Your orator shows that said defendant claims and asserts that there is due from your orator on account of the alleged taxes mentioned in division 2 of this bill, the following sums of money :

Michigan Central R. R. Co.....	\$158,245.74 ;
Battle Creek & Sturgis Ry. Co.....	4,005.10 ;
Bay City & Battle Creek Ry. Co.....	2,096.01 ;
Buchanan & St. Jos. River R. R. Co.....	165.53 ;
Canada Southern Bridge Co.....	4,894.23 ;
Detroit & Bay City R. R. Co.....	24,923.28 ;
Detroit, Delray & Dearborn R. R. Co.....	827.07 ;
Grand River Valley R. R. Co.....	9,765.95 ;
Jackson, Lansing & Saginaw R. R. Co.....	16,181.46 ;
Kalamazoo & So. Haven R. R. Co.....	2,912.10 ;
Michigan Air Line R. R. Co.....	21,397.26 ;
Michigan, Midland & Canada R. R. Co.....	1,467.74 ;
Toledo, Can. Sou. & Detroit Ry. Co.....	16,564.83 ;

in addition to the sum of money heretofore paid by your orator, as aforesaid, and demands of your orator that it forthwith pay such additional amount of taxes ; which demand your orator is advised and submits is grossly excessive, extortionate, unjust and illegal, and is in violation of the rights secured to your orator under the Constitution of the United States and the constitution and laws of the State of Michigan.

20. Your orator further shows and alleges that the matter in dispute in this suit exceeds the sum of two thousand dollars, exclusive of interest and costs ; and that your orator has no remedy in the premises at common law, and can obtain relief only from a court of equity ; and that said defendant, unless restrained by this court, will proceed to enforce his said demand and said alleged tax against the property of your orator by distress and by seizure and sales of such property.

31 Wherefore your orator prays :

(a.) That the defendant may be required to answer this bill of complaint, but not under oath ; his answer under oath being hereby expressly waived ;

(b.) That a restraining order be issued forthwith, and a temporary injunction be granted *pendente lite* and that a permanent injunction be awarded upon final decree, restraining the defendant and his successor and successors in office and his and their clerks, agents and assistants from proceeding in any manner under color of the authority assumed to be given him or them by act No. 173 of the public acts of Michigan of 1901, and from collecting or attempting to



collect from your orator any part of the sum of money asserted by defendant, as alleged in this bill, to be due from your orator to the State of Michigan, or any part of the alleged tax mentioned in this bill, until the further order of this court;

(c.) That the property of your orator be adjudged by this court to be free from and unaffected by the alleged lien of said pretended taxes;

(d.) That process in proper form may issue from this honorable court requiring said defendant to appear and answer this complaint, and to stand to and abide by any decree that may be rendered herein;

(e.) That your orator, and all others who properly become parties to this suit, may have such other or further relief in the premises as to this court may seem just.

32 And your orator will ever pray.

THE MICHIGAN CENTRAL RAILROAD  
COMPANY,

By O. E. BUTTERFIELD,

Solicitor for Complainant.

HENRY RUSSEL,  
ASHLEY POND,  
Of Counsel.

STATE OF MICHIGAN, }  
County of Wayne, } ss:

Henry B. Ledyard, being duly sworn, deposes and says that he is the president of The Michigan Central Railroad Company, the complainant in the foregoing bill of complaint; that he has read said bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

HENRY B. LEDYARD.

Subscribed and sworn to before me this eighth day of June, 1903.

OWEN RIPPEY,  
Notary Public.

33

EXHIBIT A.

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
 vs.  
 PERRY F. POWERS, Defendant. }

STATE OF MICHIGAN, }  
 County of Washtenaw, } ss :

Amariah F. Freeman, of the village of Manchester, county of Washtenaw, State aforesaid, being duly sworn, deposes and says that he is a member of the board of State tax commissioners of the State of Michigan, and also *ex officio* a member of the State board of assessors of said State, and that he has been such member of said boards ever since the same were organized.

Deponent further says that the property of said State other than that subject to assessment by the State board of assessors upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes for the year 1902 was not assessed at its true cash value.

Deponent further says that the total true cash value of said property in the year 1902 was \$1,715,000,000, according to the information and knowledge of deponent, and that the assessed valuation thereof was \$1,418,251,858, or 82.7 per cent. of the true cash value thereof.

Deponent further says that the knowledge of the facts herein affirmed was acquired by investigations made by himself and other members of said board of State tax commissioners and by an examination of the records and files in the office of said board of State tax commissioners.

Deponent further says that the said board of State tax commissioners has abstracts of the official records of conveyances of real estate in all the counties of said State from July, 1898, to July, 1899, showing the names of the parties to each conveyance, description of the property and the consideration named in the conveyance; that competent agents of said board verified the considerations mentioned in the conveyances as aforesaid in a large number of instances and made investigation of the value of the property in most of the assessment districts of the State; and that in addition to the information so received said board considered reports received from various assessing officers of the State, and other information.

Deponent further says that the report of said board of investigation above referred to appears in print in the report of the State board of equalization for the year 1901, and a similar course of investiga-



tion has been carried on by said board continuously up to the present time.

Deponent further says that he has been present at the examination of a large number of assessing officers of said State when said assessing officers have been interrogated as to their method of arriving at the assessed valuation of the property in their respective districts, and that at least five hundred of said officers have stated that they had uniformly and intentionally assessed property in their respective districts at a certain percentage of its true cash value.

35 Deponent further says that such percentages vary in different assessing districts, ranging from fifty to ninety per cent.

Deponent further says that the fact that property of said State other than that subject to assessment by the State board of assessors upon which advalorem taxes were assessed for State, county, township, school and municipal purposes for the year 1903 was assessed at 82.7 per cent. of its true cash value, as heretofore stated, is due to the fact that the assessing officers of the State generally have uniformly and intentionally assessed such property in their respective districts at a sum less than what they believed to be its true cash value.

And further deponent saith not.

AMARIAH F. FREEMAN.

Subscribed and sworn to before me this 25th day of May, 1903.

F. M. FREEMAN,  
Notary Public.

36

# EXHIBIT "D."

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
vs. }  
PERRY F. POWERS, Defendant.

STATE OF MICHIGAN, } ss :  
County of Marquette, }

Jacob Dolf, being duly sworn, deposes and says that he resides at the city of Marquette, in said county; that the Fuller & Friant Lumber Company own and operate a standard gauge railroad running from Thompson, in the county of Schoolcraft, in a generally northerly direction for a distance of from 22 to 24 miles, which railroad crosses the Minneapolis, St. Paul & Sault Ste. Marie railroad at a point called Delta junction; that the said Fuller & Friant Lumber Company holds itself out as a common carrier upon its said railroad, and carries freight in car-load lots for the public, for

compensation, upon a regular tariff; that the business of the said lumber company as common carrier is at the present time confined to forest products in car-load lots, and that such car-load lots have been frequently and regularly carried for parties having no connection in any way with the said Fuller & Friant Company, and having no ownership in the said railroad, at a regularly established tariff; that deponent obtained the information upon which  
 37 this affidavit is based from one Norris, the superintendent of the said railroad, and from numerous shippers; that said Fuller & Friant Company were common carriers over the said railroad during the year 1902.

Deponent further says that he was informed by the superintendent of the said Fuller & Friant Lumber Company that they were not prepared to cater for miscellaneous freight, as they had no box cars or cabooses to load it on, but that they expected to carry miscellaneous freight in the near future.

JACOB DOLF.

Subscribed and sworn to before me, this 29th day of April, 1903.

[SEAL.]

JOHN H. O'MEARA,  
 Notary Public, Marquette County, Michigan.

38

EXHIBIT "C."

UNITED STATES OF AMERICA, {  
 State of Michigan. }

In the Circuit Court of the United States for the Western District of Michigan. In Equity.

MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
 vs.  
 PERRY F. POWERS, Defendant. }

Henry W. Magoon, being duly sworn, deposes and says that he is the private secretary and manager for Louis Sands hereinafter named; has personal knowledge of the facts herein stated and knows the same to be true.

Deponent further says that Mr. Louis Sands is the sole owner of the railroad sometimes called the Louis Sands Company railroad, that the said railroad is situated in the county of Kalkaska and State of Michigan, and passes through a portion of townships numbers 25 north 7 west, 26 north 6 west, 27 north 5 and 6 west, and 28 north 5 and 6 west; that including its branches it is about twenty-five miles in length, and is operated by said Louis Sands as a private logging road; that the same has three locomotives, no passengers or freight equipments other than logging cars; that the same is now

being operated by the said Louis Sands; and that the owner of said road is not a corporation.

HENRY W. MAGOON.

Subscribed and sworn to before me, this 23rd day of April, A. D. 1903.

[SEAL.]

ALFRED C. CHRISTENSON,  
Notary Public.

39

EXHIBIT "B."

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
vs.  
PERRY F. POWERS, Defendant. }

STATE OF MICHIGAN, } ss:  
County of Wayne, }

Ira T. Sayre, of the village of Flushing, county of Genesee, State aforesaid, being duly sworn, deposes and says that he is a member of the board of State tax commissioners of the State of Michigan, and also *ex-officio* a member of the State board of assessors of said State, and that he has been such member of said boards since May, 1901.

Deponent further says that the property of said State other than that subject to assessment by the State board of assessors upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes for the year 1902 was not, in his judgment, assessed at its true cash value.

Deponent further says that the total true cash value of said property in the year 1902 was not less than \$1,715,000,000, according to the information and knowledge of deponent, and that the assessed valuation thereof was \$1,418,251,858, or about 82.7 per cent. of the true cash value thereof.

40 Deponent further says that the knowledge of the facts herein affirmed was acquired by investigations made by himself and other members of said board of State tax commissioners and by an examination of the records and files in the office of said board of State tax commissioners.

Deponent further says that the said board of State tax commissioners has abstracts of the official records of conveyances of real estate in all the counties of said State from July, 1898, to July, 1899, showing the names of the parties to each conveyance, description of the property and the consideration named in the conveyance; that competent agents of said board verified the considerations mentioned in the conveyances as aforesaid in a large number of in-

stances and made investigation of the value of the property in most of the assessment districts of the State; and that in addition to the information so received, said board considered reports received from various assessing officers of the State, and other information.

Deponent further says that the report of said board of the investigation above referred to appears in print in the report of the State board of equalization for the year 1901, and a similar course of investigation has been carried on by said board continuously up to the present time.

Deponent further says that he has been present at the examination of a large number of assessing officers of said State, when said assessing officers have been interrogated as to their method of arriving at the assessed valuation of the property in their respective districts, and that at least four-fifths of said officers have stated that they had uniformly and intentionally assessed property in their respective districts at a certain percentage of its true cash value.

Deponent further says that such percentages vary in different assessing districts, ranging from fifty to ninety per cent.

41 Deponent further says that the fact that property of said State other than that subject to assessment by the State board of assessors upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes for the year 1903 was assessed in his judgment at about 82.7 per cent. of its true cash value, as hereinbefore stated, is due to the fact that the assessing officers of the State generally have uniformly and intentionally assessed such property in their respective districts at a sum less than what they believed to be its true cash value.

And further deponent saith not.

IRA T. SAYRE.

Subscribed and sworn to before me this 10th day of June, 1903.

A. F. FREEMAN,

Notary Public in and for Washtenaw County, Michigan.

42

EXHIBIT "E."

State of Michigan, Supreme Court.

BOARD OF EDUCATION OF THE CITY OF DETROIT, )  
Relator, )

*vs.*

No. 19876.

THE STATE BOARD OF ASSESSORS, Respondent. }

The answer of the above named respondent to the petition of the above named relator, in response to the order to show cause, respectively shows:

1. That it admits the facts stated in paragraphs one and two of said petition, as alleged in said petition.

2. That it denies that the average rate required by section 11 of article XIV. of the constitution and act 173 of the public acts of 1901, to be procured by this respondent, should have been ascertained and determined by dividing the sum total of the appropriations for State, county, township, school and municipal purposes levied upon the property subject to an ad valorem assessment for the current year, which total sum is alleged by relator to be the sum of \$23,493,733.55 (should be \$23,476,733.55) by the sum total of the assessments made and reported by the various assessing officers of the State upon all property subject to an ad valorem assessment aside from the property specified in and subject to taxation under the provisions of said act 173, and which said sum as made by the various assessing officers and reported by them to 43 the State board of assessors, relator alleges to be the sum of \$1,418,237,058 (should be \$1,418,251,858), which division, it is alleged by relator, would have produced, as the average rate, the following, \$16.55207 (should be \$16.5533) as the rate for each one thousand dollar valuation on the property specified in said act, and denies that said figure obtained by said division is the true rate as contemplated by law, or is obtained by the method contemplated by the constitution.

3. That it admits, as alleged in paragraph four of said petition, that it, as said State board of assessors, in order to secure the average rate required by the constitution and statute did divide the sum of \$23,476,733.55, which sum represents the total amount of the appropriations for State, county, township, school and municipal purposes to be raised by taxation on all property subject to an ad valorem assessment, aside from the property specified in said act, by the sum of \$1,715,000,000, which said sum was found by said board to be the cash value of the assessable property of said State and would result by adding to the sum total of the assessments made and reported to this respondent, as said State board of assessors, by the various assessing officers of the State the sum of \$296,748,142, which said last named sum when added to the said total assessed valuation of the property of the State, other than that taxable under said act 173, assessed for State, county, township, school and municipal purposes, would bring those properties to cash value as required in the constitution to be assessed and that the said division produced, as the average rate per one thousand dollars valuation upon all property subject to taxation under the provisions of said act 173, the sum of \$13.68905, which determination was a judicial determination on the part of this board. That it denies that the 44 method of obtaining said average rate was contrary to the constitution and the provisions of said act 173 and without any authority or warrant of law, and denies that it obtained the said sum of \$1,715,000,000 so used as a divisor by adding an arbitrary sum to the sum total of assessments made and reported to it by the various assessing officers of the State.

4. That it admits, as alleged in paragraph five of said petition,

that the true rate contemplated by law for the taxation of property subject to taxation under said act 173, is the average rate to which all property in the State of Michigan upon which an ad valorem assessment is made is subject, but denies that the said average rate can only be ascertained and determined by dividing the sum total of the appropriation for the current year for State, county, township, school and municipal purposes to be raised by taxation upon all property aside from the property specified in said act 173, subject to an ad valorem assessment by the sum total of the assessments made by the various assessing officers of the State upon all property in the State of Michigan subject to an ad valorem assessment, aside from the property specified in said act.

5. That it admits, as alleged in paragraph six of said petition, that a demand was made upon this respondent to correct the rate as ascertained and determined by it, and that said board has refused and still continues to refuse to make such correction, but shows that said demand for a correction of such rate was not duly made or made within the time limited by law for the fixing of such rate, but was made on the 18th day of February, A. D. 1903, subsequent to the completion of the assessment roll for the taxation of the properties of corporations subject to taxation by this respondent, as said State board of assessors, and subsequent to the extension of the taxes thereon, at the rate so determined.

45 6. That it admits the facts stated in paragraphs seven and eight of said petition to be substantially true as therein set forth.

7. That it admits that the amount of primary school moneys to be received by the said relator will be affected by the method used in obtaining said average rate, and that the method for which said relator in its petition contends, if used, would secure to it in the neighborhood of sixty thousand dollars more than it will receive under the method pursued by this respondent in ascertaining and determining said average rate.

8. This respondent further answering shows that it is required by the constitution of this State and the statute providing for the assessment and taxation of railroad companies and other corporations by a State board of assessors to value and assess the property of the several railroad and other corporations subject to its jurisdiction under the provisions of said constitution and statute at their true and actual cash value; that, for the purpose of ascertaining the true cash value of the property of said corporations for the purposes of assessment, it required and received from said corporations the reports provided for in said act 173, giving detailed information as to the property of said corporations, its nature, condition and value, and after careful examination and consideration of such reports and of such other information as was procurable bearing upon the true cash value of said property, assessed the same at its true and actual cash value in every instance; that it believes that the said assessments of the said property of said corporations subject to taxation



under the provisions of said act 173 represent the true and actual value of such property, so assessed, as nearly as it is possible  
46 to estimate and obtain the same; and that, after completing said assessment, it attached thereto its certificate as required by statute in the following form:

"We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal and other purposes, levied throughout the State, during the present year, as determined by us."

9. That by the statute the persons constituting this respondent, The State Board of Assessors, are *ex-officio* members of and constitute the board of State tax commissioners created by virtue of the provisions of the general tax law of this State, as amended by act 154 of the public acts of 1899; that as such board of State tax commissioners it has and exercises general supervision over the supervisors and other assessing officers of the State, and as such has become possessed of the facts and conditions of the assessable property of the State and the value thereof, and that the said board of State tax commissioners is required to and does, personally and through its members, agents and field men, make examinations of local conditions relating to taxation and local assessments, and with a view to ascertain whether the assessments of property subject to ad valorem taxes for State, county, township, school and municipal purposes throughout the State are made as required by law; that the examination of the assessments of the property of the State subject to ad valorem taxes made by the said board of State tax commissioners was complete and thorough, that the result of the examinations so made furnished the said

47 board of State tax commissioners with accurate and detailed information as to the nature of the assessments made throughout the State, and whether those assessments were at cash value; that the result of said information, so procured, indicated to the said board of State tax commissioners and to this respondent that the assessments of property subject to ad valorem assessment and taxation for the raising of taxes for State, county, township, school and municipal purposes throughout the State were not at cash value as required by the statutes and constitution; but that they were considerably below the value required to be placed thereon by the constitution and the statutes, and that the knowledge thus obtained has become the knowledge and information of the said State board of assessors.

10. That the constitution contemplates that both the property of railroad and other corporations subject to taxation by a State board

of assessors under the provisions of act 173 of the public acts of 1901, and the other property in the State subject to ad valorem taxes for State, county, township, school and municipal purposes shall be assessed and taxed at its true and actual cash value; that in providing that the property of corporations might be assessed by a State board of assessors and taxed at the average rate of taxation imposed upon other property subject to taxation for State, county, township, school and municipal purposes, it was intended and contemplated that such average rate should be the average rate levied upon the actual value of the property taxed, instead of upon the assessed value of such property where the actual true cash value of such property differed from such assessed value; that the property of the railroad and other corporations assessed by a State board of assessors should bear the same rate of taxation upon its actual  
 48 and true cash value as was borne by the other property of the State subject to ad valorem taxes for State, county, township, school and municipal purposes upon its actual and true cash value; and that the constitution contemplates equality in the burden of taxation borne by the property subject to assessment by a State board of assessors and the other property of the State, and that such equality could only be procured by reducing the property of the railroad companies and other corporations and the other properties of the State to the same basis of valuation, which, under the constitution, could only be the cash value of such property.

11. That, as this respondent believes and charges the truth to be, the undervaluation of the property of the State subject to ad valorem taxes for State, county, township, school and municipal purposes throughout the State was not the result of accident, inadvertence, or mistakes in judgment, but that such undervaluation of such property was, in a large number of the municipalities of the State, intentional and general, and that this practice of undervaluation has been in vogue in this State for a great number of years; and that if the court desires to examine the data upon which the foregoing statements are based it will be furnished.

12. That, knowing that the properties of the several railroads and other corporations required to be assessed by this respondent as the State board of assessors had been assessed at cash value and as nearly in accordance with the constitution as possible, it appeared to be manifestly unfair and productive of inequality to use as a basis for determining the average rate for the taxation of the property of corporations subject to the jurisdiction of the State board of assessors a rate secured by the use of valuations of property  
 49 which had been assessed at much less than actual cash value and contrary to constitutional requirements; and it therefore procured the opinion of the attorney general upon its right to reduce the assessed valuation of the property subject to ad valorem taxes for State, county, township, school and municipal purposes to the equivalent of cash value for the purpose of using the same as a divisor in obtaining such average rate; that the attorney general



advised that the actual cash value of the property of the State upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes should be taken as a divider in determining such average rate, in case it was found that the assessed valuation of such property was not the actual and true cash valuation, and that the State board of assessors had the authority to determine the actual and true cash value of the property of the State subject to ad valorem taxes for State, county, township, school and municipal purposes as incident to its authority to ascertain and determine such average rate.

That this respondent, in pursuance of its duty in the premises, determined that the property throughout the State, other than property subject to assessment under the provisions of act 173, upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes, was assessed at much below its true cash value, to wit, the sum of \$296,762,942.00, and for the purpose of arriving at the actual and true cash value of the property of the State other than that subject to assessment under the provisions of act 173, subject to ad valorem taxation, said board considered reports received from the various assessing officers of the State, the total valuation of said properties, as assessed and other information obtained by said board bearing upon the cash value of the property so assessable, and found the sum to be said sum of \$1,715,000,000, and

50 that the said sum so obtained and so determined to be the true and actual cash value of the property of the State assessed for State, county, township, school and municipal purposes, was used in obtaining the average rate in the method set forth in paragraph two of said petition.

Wherefore, this respondent submits that said method pursued in obtaining said average rate was in accordance with law, and that the mandamus prayed for should be denied.

WM. T. DUST,  
IRA T. SAYRE,  
JAMES C. McLAUGHLIN,  
A. F. FREEMAN,

Members State Board of Assessors.

A. F. FREEMAN AND  
J. C. McLAUGHLIN,

Attorneys for Respondent, The  
State Board of Assessors.

Business address: City hall, Lansing, Michigan.

STATE OF MICHIGAN, }  
County of Ingham, } ss:

Wm. T. Dust, Ira T. Sayre, James C. McLaughlin, and A. F. Freeman, members of the State board of assessors, being first duly sworn, each for himself, deposes and says, that he has read the foregoing

answer and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated to be on information and belief, and as to those matters, he believes it to be true.

WM. T. DUST.  
IRA T. SAYRE.  
JAMES C. McLAUGHLIN.  
A. F. FREEMAN.

51 Subscribed and sworn to before me this 14th day of April, 1903.

GEORGE H. HARCOURT,  
Notary Public, Cheboygan County, Acting in  
Ingham County, Michigan.

STATE OF MICHIGAN, ss:

In the Supreme Court, Clerk's Office.

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the answer now on file in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court at Lansing, this 11th day of June, A. D., 1903.

[Seal of the Supreme Court.]

CHAS. C. HOPKINS, Clerk.

The bill was filed June 16th 1903.

52 United States Circuit Court for the Western District of Michigan, Southern Division. In Equity.

MICHIGAN CENTRAL RAILROAD COMPANY, Complainant,

vs.

PERRY F. POWERS, Auditor General of the State of Michigan, }  
Defendant. }

The Answer of said Defendant, Perry F. Powers, Auditor General of the State of Michigan, to the Bill of Complaint of the Above Named Complainant.

For answer to said bill, said defendant says:

1. That he admits, as set forth in paragraph 1 of said bill of complaint (p. a) that said complainant is and was at the times mentioned in said bill a corporation organized and existing under the

laws of the State of Michigan for the organization of railroad companies; that complainant owns and operates, and since 1901 has owned and operated a railroad within the State of Michigan; that its property in the State of Michigan includes a large amount  
53 of lands and real estate, and that this defendant is a resident of the city of Cadillac, in the county of Wexford and State of Michigan, in said district, and a citizen of the State of Michigan and of the western district thereof, and that he was heretofore duly elected auditor general of the State of Michigan, has duly qualified as such officer and is now in possession of said office and discharging the duties thereof; but says that while his personal residence is in said city of Cadillac in said western district of Michigan, his official residence is required by the constitution of the State of Michigan to be, and is, in the city of Lansing, in the county of Ingham, in said State and in the eastern district thereof, and that all of his official acts and doings are by law required to be done and are done in the said city of Lansing.

2. That he admits, as stated in paragraph 2 of said bill (p. 1), and says, that on or about February 1, 1903, acting as the State board of assessors of Michigan, under and by virtue of the authority of an act of the legislature of said State, known as act 173 of the public acts of 1901, approved May 27, 1901, Amariah F. Freeman, William T. Dust, Ira T. Sayre and James C. McLaughlin delivered to this defendant a tax roll upon which they had placed and described the property of said complainant and others, and had made an assessment of the property of said complainant and of such others, and had levied what the said Freeman, Dust, Sayre and McLaughlin and this defendant claimed to be, and intended and proposed to enforce against said complainant and such others as, a tax upon the property of said complainant and such others; that the assessment so placed upon the property of said complainant and the tax extended thereon were, in amounts, substantially as set forth in said bill of complaint, and that attached to the said tax roll and made a part thereof was the certificate, copy of which is set forth in said bill of complaint, (p. 3).

That he admits that until the decision of the supreme court  
54 of Michigan, mentioned in said bill, this defendant claimed that said taxes so extended upon the said assessment roll, including the tax extended thereon against the property of said complainant, constituted a debt from the several companies against which they were extended, including said complainant, to the State of Michigan, and intended to proceed, and but for said decision of said supreme court and restraint by this court would have proceeded, to enforce said alleged tax against the property of said complainant and such others by the measures and proceedings provided for the collection of such taxes in said act 173 of 1901.

That he admits that the average rate of taxes mentioned in said certificate, dated January 29th, 1903, and attached to said *original* assessment roll, and therefore ascertained and determined by said

Freeman, Dust, Sayre and McLaughlin, was \$13.68905 per one thousand dollars of the value of the general properties of the State as determined by them; and that said alleged average rate was ascertained in the manner set forth in said paragraph 2 of said bill of complaint (p. 4), and that said Freeman, Dust, Sayre and McLaughlin construed said act 173 and the constitution of the State of Michigan, as authorizing them to act in the manner set forth in said bill of complaint (p. 4), and admits that the aggregate assessed valuation of the general property of the State as assessed by the several assessing officers of the several municipalities of the State was \$1,418,251,858; but denies that said aggregate assessed valuation was \$296,748,942 less than the actual and true cash value thereof; that said sum of \$1,715,000,000, as found by said Freeman, Dust, Sayre and McLaughlin, is, or represents, the actual true cash value of the general property of the State subject to ad valorem assessment for State, county, township, school and municipal purposes; and denies that said Freeman, Dust, Sayre and McLaughlin acted officially in determining that the assessed value of the properties of the State subject to ad valorem assessment for State, county, township, school and municipal purposes did not represent the true  
 55 and actual cash value of the same, and that said persons had any jurisdiction or power to make such determination, or that such determination is of any force or effect.

That he admits, as stated in paragraph 2 of said bill of complaint (p. 5), and says, that after the preparation of said assessment roll and the extending of the taxes thereon at the rate determined by said members of said State board of assessors and the delivery of said tax roll to this defendant, and after the first day of February, 1903, such proceedings were had in the supreme court of the State of Michigan in a certain cause wherein The Board of Education of the City of Detroit was petitioner, and The State Board of Assessors was respondent, that the constitution of the State of Michigan and said act 173 were construed and held by said supreme court to confer upon said State board of assessors no discretion whatever in the determination of the property value as a divisor in the calculation of the average rate of taxation to be applied under said act 173; that said State board of assessors, in their ascertainment of such average rate of taxation was limited to the ministerial function of dividing the aggregate of the taxes levied in the State for State, county, township, school and municipal purposes by the aggregate assessed valuation of the general property of the State, other than that assessed under act 173, assessed by the various local assessing officers in said State; that such actual assessed valuation for the year 1902 of the general property of the State assessed otherwise than under said act number 173 was \$1,418,251,858, which, if used as a divisor of the ad valorem taxes found by said Freeman, Dust, Sayre and McLaughlin to be levied upon said property would give as the average rate of taxation \$16.55329 per one thousand dollars of assessed valuation, and that said supreme court

of Michigan thereupon ordered a writ of mandamus to issue commanding said State board of assessors to reconvene and reascertain the average rate in accordance with such decision of said court.

56 That he admits, as stated in said paragraph 2 of said bill of complaint (pp. 5 and 6), that after such decision of said supreme court of Michigan, said Freeman, Dust, Sayre and McLaughlin reconvened as said State board of assessors, and proceeded, in accordance with said decision and the order of said court, to reascertain and redetermine the average rate of taxation, and did so ascertain and determine it at said amount of \$16.55329 on each thousand dollars of assessed valuation, and that said Freeman, Dust, Sayre and McLaughlin thereupon (in accordance with the statute) adopted, signed and promulgated a statement of the method of redetermining and reascertaining such average rate in substantially the form set forth in said bill of complaint, (pp. 6 and 7).

That he admits, as stated in said bill of complaint (p. 7), that said Freeman, Dust, Sayre and McLaughlin, acting as the State board of assessors of Michigan, under and by virtue of the authority of said act 173 of the public acts of 1901, thereupon, and on or about May 6th, 1903, prepared a new tax roll upon which they placed and described the property of said complainant and others; *but denies that said persons, acting as said board, made an alleged assessment of the property of said complainant and such others; and says that in accordance with said act 173 and the said order of the supreme court the said persons, acting as such board, made a duplicate of the original assessment roll, theretofore prepared by them as set forth in said bill of complaint, and admits that upon said duplicate assessment roll, so prepared, said board levied what it and this defendant claims to be and what is, if said act of the legislature of the State of Michigan and said proceedings thereunder are valid, a tax upon the property of said complainant and such others; that the assessment of the property of said complainant appearing upon said duplicate assessment and tax roll is the same as was made and stated in the said first or original tax roll prepared by the said State board of assessors, and that the tax so placed upon the property*

57 *of said complainant in such new tax roll is substantially as set forth in said bill of complaint; that by the proceedings aforesaid the taxes, sought to be and, levied upon the property of said complainant and such other companies are increased in substantially the amounts set forth in said bill of complaint and that attached to said tax roll and made a part thereof by the said persons acting as said State board of assessors, is the aforesaid statement, set forth in said bill of complaint (pp. 6 and 7), of the method of reascertaining and redetermining said average rate of taxation, and also a certificate signed by said Dust, McLaughlin and Freeman, setting forth the compliance with said order of the supreme court and said act 173, the preparation of a duplicate assessment roll and the extension of the taxes thereon at such reascertained*

and redetermined rate, which said certificate is substantially as set forth in said bill of complaint, (pp. 8 and 9.)

That he admits that, as stated in said bill (p. 9), the assessment made against the property of said complainant by said Freeman, Dust, Sayre and McLaughlin in said original assessment roll and transferred to said duplicate assessment roll prepared by them was determined and found by them to be the true cash value of the property of said complainant and the full and actual value thereof; but denies, that said assessment of said property of said complainant was at the true and actual cash value thereof, or that the assessments of the property of said complainant and such others appearing on said assessment roll represent the actual and true cash value thereof as required by the constitution and statute, and denies that the assessments made by the assessing officers of the State other than said State board of assessors upon the general property of the State assessed otherwise than under said act 173, in 1902 were, and for many years before, regularly had been, assessed at much less than the true cash and actual value of such property, and not over eighty per cent. of such true cash and actual value; and while he admits that said Freeman, Dust, Sayre and Mc-

58 Laughlin, in their original determination of said average rate found and determined such assessments upon the general property of the State assessed by others than themselves to have been, in 1902, much less than the true cash and actual value of the property, he denies any authority of such persons to make such determination, or any force in such determination; he denies that it was in 1902 and for many years theretofore had been the custom and general practice and purpose and intent of the assessing officers of the State generally to make their assessments for the purposes of taxation at less than the true cash and actual value of the assessed property; he denies that while such under-assessment made by the local assessors in the various counties, towns, cities, school districts and other assessing districts of the State, varied in different districts, being, in many instances, as low as fifty per cent. of the true cash and actual value, it was the habit and purpose of the assessors in 1902 and prior years to maintain, as to the property of different owners in the same assessment district, the same general ratio of assessed to full value; and he denies that such ratio seldom exceeded eighty per cent., and denies that if such general under-assessment of the property of the State assessed otherwise than under act 173, existed, it was not in 1902 and in prior years or at any other time the result of accident; and denies that the assessments in the year 1902 by the assessing officers generally and in a great number of the different and various assessment districts in the State of the property of the State assessed otherwise than under said act 173, were intentionally made by them at less than the true cash value of the property assessed; that the assessments made did not express the real judgment of the assessing officers making the assessment, in respect to the true cash value of the property



assessed by them; that thereby a greater rate and burden of taxation was put by said State board of assessors upon the property of said complainant by their said action of May 6th, 1903, than would have been put thereon if such assessment had been made by said assessing officers as required by law, to the extent of twenty per cent. or any other extent of the taxes levied upon the property of said complainant by said State board of assessors, and avers that the affidavits of said Freeman and Sayre, attached to said bill of complaint, which state such under-valuations, are mere conclusions, do not represent the facts, are on their face contradictory and untrue, and denies that, to such extent of such tax, the collection thereof would deprive said complainant of its property without due process of law or deny to it the equal protection of the laws in contravention of the provisions of the 14th amendment of the Constitution of the United States.

That he admits that, as stated in said bill of complaint (pp. 10 and 11) the State board of equalization at its meeting in the year 1901, being its most recent session for purposes of equalization, determined the aggregate value of the general property of the State not assessed under act 173, upon which ad valorem taxes were assessed, to be the sum of \$1,578,100,000, whereas the assessed valuation of said property in the same year was the sum of \$1,335,109,918, or only 84.6 per cent. of its value as determined by the State board of equalization; but says that such ascertainment and determination was solely and exclusively for the purposes of an adjustment of the burdens of the State tax among the several counties of the State, and that the said sum does not necessarily represent the total true cash value of the property of the State subject to ad valorem assessment for State, county, township, school and municipal purposes.

That he denies, as alleged in said bill (p. 11) that all the proceedings of said Freeman, Dust, Sayre and McLaughlin in reascertaining the average rate of taxation as aforesaid and in making their second alleged duplicate tax roll and in all others of their transactions subsequent to the said decision of the supreme court of Michigan were without sufficient notice to the said complainant or to others whose property purports to be assessed in said tax roll and were without any knowledge on the part of said complainant or such others as to the time or place of such proceedings; but admits that neither said complainant nor any of such others at any time appeared or was present or represented in any way at any of said proceedings; that at the time of the hearing of said complainant and the others mentioned in said tax rolls in the course of the proceedings which resulted in the first alleged tax roll said Freeman, Dust, Sayre and McLaughlin had already made their first determination of the average rate of taxation and had already entered such average rate of taxation upon their records, and that said Freeman, Dust, Sayre, and *McLaughlin had in their aforesaid first determination of the average rate of taxation fixed it with a view to*

*making an equalization between the assessments made by them under such act number 173 upon the property of said complainant and such others and the general property of the State assessed otherwise than under said act 173, and therefore declined to enter upon any question or consider any evidence concerning an equalization of their assessments with the other assessments of the State by an appropriate reduction of the assessed valuations to be made by them, and that he denies that the denial, by the supreme court, in its said decision, of the existence of any authority in said Freeman, Dust, Sayre and McLaughlin to increase to what they considered was its true cash value the valuation of the property generally in the State, imposed upon the property of said complainant and said other companies a tax about one-fourth greater than is imposed upon property generally in the State of equal value.*

That he admits, as stated in said bill of complaint (p. 12), and says, that since May 6th, 1903, said state board of assessors, under and by virtue of the authority of said act 173, has delivered to this defendant their last aforesaid tax roll upon which the property of said complainant and others is placed and described and an assessment of the property of said complainant and others is made  
61 and a tax upon such property is levied in the amount as to said complainant's property substantially as set forth in said bill; that this defendant claims that the taxes so extended upon said tax roll, including the tax extended thereon against the property of said complainant, constitutes a debt from the several companies against which such tax is extended to the State of Michigan, and constitutes a lien upon the property of said complainant and such others, real, personal and mixed, within the State of Michigan, having precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said complainant or such others; that said lien and debt may be by said defendant enforced by seizure and sale of said property or such portions thereof as may be necessary to satisfy the same at any time hereafter; that said lien of said tax constitutes a cloud upon the title of said complainant and of such others against whom said taxes have been extended as aforesaid, to their respective properties, including their said lands and real estate, and that this defendant, unless such taxes are paid or unless restrained by this or some other court, will proceed to enforce said tax and said lien against the property of said complainant and of such others by instituting the proper proceeding in accordance with the statute for the recovery of such tax, or by distress and by seizure and sale of such property; but denies, that the same will cause said complainant and such others irreparable injury; and he denies that there is no provision of law in the State of Michigan or otherwise by virtue of which said complainant or either of such corporations may bring an action at law or institute proceedings against the State of Michigan to recover back moneys which it or either of said corporations may pay or which may be collected from it or either of them for or on account of said taxes; but says that

under the statutes and decisions of the State of Michigan the said complainant would be entitled to pay such taxes, so levied and assessed against it, under protest and to bring a suit to recover  
62 the same, and that said complainant has other legal remedies in the premises without resorting to a court of equity.

That he denies that, as stated in paragraph 2 of said bill, (p. 13) said assessments and taxes made in said second tax roll against the property of said complainant and others mentioned in said tax roll are invalid for the reasons that they were made without any opportunity to said complainant or others to appear or to be heard concerning them and without any actual appearance or hearing of said complainant or such others, and were in contravention not only of the constitution of Michigan but also of the provisions of the fourteenth amendment to the Constitution of the United States, requiring that no person shall be deprived of his property without due process of law, and that no State shall deny to any person the equal protection of the laws, and further that the said proceedings of the assessing and taxing officers of Michigan and said pretended assessments and taxes against the property of said complainant and such others founded thereon result in an attempted taxation of the property of said complainant at about one-fourth more in proportion to its value than other property generally is taxed in the State, and thereby contravene not only the constitution of the State of Michigan but also those provisions of the fourteenth amendment to the Constitution of the United States mentioned in paragraph 2 of said bill, and that to the extent at least that such pretended taxes are thus greater than the taxes upon property generally of equal value, said proceedings are null and void.

2a. This defendant further answering to the foregoing portion of said bill shows that under the constitution and statutes of the State of Michigan all assessments of property are required to be at cash value, and that cash value is defined by statute to mean "the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, meaning the price which  
63 could be obtained therefor at private and not at forced or auction sale;" that under the provisions of the constitution and statutes it is the duty of every assessing officer in the several municipalities and assessment districts of the State to assess all property both real and personal subject to its jurisdiction at its true and actual cash value, and that the neglect or refusal so to do subjects the officer offending to conviction of misdemeanor attended with heavy penalty; that by statute boards of review have been provided for the several municipalities, which are given authority to review assessments made by the several assessing officers and to cause the assessments appearing upon the assessment rolls reviewed by them to be raised or lowered so as to be at their true cash value, and that the statute has likewise provided for a review and supervision of the assessment rolls of the several assessing officers in the several assessment districts in the several municipalities of the State

by a board of State tax commissioners, (the members of which are *ex officio* members of and constitute the State board of assessors) which is given and exercises general supervision over the supervisors and other assessing officers of the State and is authorized to take such measures as will secure the enforcement of the provisions of the tax laws of the State to the end that all property of the State liable to assessment for taxation shall be placed upon the assessment rolls and assessed at its actual cash value; that under its supervisory authority over the several assessment rolls of the several municipalities of the State the said board of State tax commissioners is authorized and empowered to examine such assessment rolls and take such proceedings as it may deem necessary to make the same conform to constitutional and statutory requirements and to represent the true and actual cash value of the assessments appearing thereon; that this defendant is informed and believes that the assessments made by the several local assessing officers throughout the State, as reviewed by the several boards of review and after being acted upon by the said board of State tax commissioners, are

64 in a large majority of, if not in all, instances, in accordance with statutory and constitutional requirements and represent the true and actual cash value of the property assessed, and that the action of the several assessors in the several municipalities of the State in making assessments, and the said boards of review and board of State tax commissioners in perfecting the same, is in the absence of fraud attended with the conclusive presumption that they are legal and valid, that the assessments are at true and actual cash value, and such assessments cannot be collaterally attacked.

26. That the same presumption of correctness and regularity which accompanies the action and assessments of the State board of assessors accompanies the action and assessment of the local assessors and boards of review throughout the State and the action of the board of State tax commissioners, and that as this defendant is informed and verily believes, the assessments of property throughout the State subject to *ad valorem* assessment for State, county, township, school and municipal purposes are uniformly nearer to cash value and to the constitutional and statutory requirements in this regard than is the property of the railroad and other corporations as assessed by the State board of assessors under the provisions of said act 173, and that the assessments by the State board of assessors of the property of railroad and other corporations subject to its jurisdiction are not at, and do not represent, the true cash value of the property of those companies, but the property of such companies has been assessed and appears on said original and duplicate assessment rolls at much below its true and actual cash value.

2c. That if any undervaluation of the property of the State subject to *ad valorem* assessment for State, county, township, school and municipal purposes exists, or existed in 1902, such undervaluation is the sporadic result of accident or mistakes of judgment and is not wilful or intentional, the result premeditated, collusive or fraudu-

lent action on the part of the officers making the assessment, nor the result of agreement or concurrent action on the part of such  
65 assessing officers; that no customary, uniform, habitual or systematic practice of undervaluation exists in this State, and that if any undervaluation of such property exists, or existed in 1902, it was not the result of uniform, habitual or systematic practice of undervaluation, nor was it designed for the purpose of affecting or augmenting the tax to be imposed upon the complainant or upon the other corporations or classes of corporations subject to taxation under act 173.

2d. That if said act 173 of the public acts of 1901 is valid, it required the said State board of assessors in assessing the property of said complainant, in ascertaining and determining the average rate of taxation and in delivering said tax roll to this defendant, to proceed as it did as officers and representatives of the State of Michigan and imposes upon this defendant the duty of proceeding in accordance with its requirements to enforce the collection of such tax as an officer and a representative of the State, and this court possesses no jurisdiction to restrain such action, being inhibited by article 11 of the amendments to the Constitution of the United States, such proceeding being in substance and effect a suit against the State.

3. This defendant admits that said complainant possesses property only in the counties enumerated in paragraph 3 of said bill of complaint and that there are, and since 1901 have been, counties and numerous other political subdivisions in the State of Michigan in which said complainant neither has, nor since 1901 has had, any property whatsoever.

4. That he denies that said act 173 of the public acts of 1901, under which said Freeman, Dust, Sayre and McLaughlin proceeded and this defendant proposes to proceed as aforesaid, is repugnant to the provisions of article fourteen of the amendments to the Constitution of the United States in that its enforcement would deprive said complainant and such others against whom the said proceedings have been had and are intended, of their property with-  
66 out due process of law and would deny said complainant and such others the equal protection of the laws in the several respects set forth in paragraph 4 of said bill of complaint.

(a.) That he admits said act applies to corporations doing business as railroad companies, union station and depot companies, express companies, car loaning companies, refrigerator and fast freight line companies, and does not apply to joint stock companies, or associations, partnerships or natural persons unless such joint stock companies, associations, partnerships or natural persons and other corporations are of such character as to be regarded as included within the term "corporations or companies" as used in said act 173 and sections 10 and 11 of article fourteen of the constitution of the State of Michigan as amended, but denies that at the time of the passage of said act 173 there were and at all times since there have been in Michigan railroads owned and operated by other than cor-

porations and railroad properties owned by unincorporated associations and partnerships and individuals which were of the same sort and engaged in the same business and put to the same uses as the railroad properties of the corporations enumerated in said act for taxation thereunder; and denies, that at the time of the passage of said act there were and at all times since there have been in Michigan railroads and railroad properties of the same kind as the railroad and railroad properties of corporations enumerated for taxation under said act but belonging to corporations other than railroad corporations and not themselves subject to taxation under said act; that there were at the time of the passage of said act and ever since have been, not only corporations but also unincorporated associations and partnerships engaged in the same kind of express business in the State of Michigan and having and using in the same way in such express business the same kind of property; and denies that at the time of the passage of said act 173 there were and at all times since have been in the State of Michigan not only cor-  
 67 porations of the various sorts enumerated in said act for taxation by said State board of assessors but also unincorporated associations and partnerships and individuals engaged in the same sort of business and having and using in the same way in such business the same kind of property, and denies that Exhibits C and D of said bill of complaint furnish instances of such similar property in such similar use.

(b.) That he denies, that said act does not make a classification of property or business for purposes of taxation founded upon real differences of property or business such as would warrant the classification, but arbitrarily and unreasonably separates the companies enumerated in the act from others engaged in essentially the same kind of business and having essentially the same kind of property; that said act makes a positive and direct discrimination between persons and property of the same kind in essentially the same kind of business, making a classification on the basis, simply, of a distinction in ownership, and denies, that instances of such discrimination are street railway companies having railways running in and between different places and carrying mail, express and freight as well as passengers, and commonly known as interurban railways, as well as tram railroad companies, railroad bridge companies, railroad tunnel companies and sleeping car companies, and that all of said companies are not included in said act 173 although he admits that at the time of the passage thereof companies and corporations of all such several sorts were doing business and had property in such business and ever since have been doing business and had property in such business in the State of Michigan;

And denies that the business of said several companies and corporations not included in said act was at the time of the passage of said act, and has been essentially of the same character as that of the corporations included in said act; and that property of the said several companies and corporations not included in said act was at



the time of the passage of said act and ever since has been of essentially the same sort and put to the same use as that of the property of corporations included in said act. That as to sleeping car companies, this defendant denies that there were in the State of Michigan at the time of the passage of said act 173 and ever since have been sleeping cars owned and used by railroad corporations in the course of their railroad business and within the terms of said act 173, and denies that during all of said time there have been sleeping cars owned and used in the State of Michigan by corporations and associations other than railroad corporations in the same way and for the same purposes and in the same sort of business as sleeping cars owned and used by railroad corporations, and that the property of said sleeping car companies other than railroad corporations, is not within the terms of said act, but shows that if any such sleeping cars were so used and owned by said railroad corporations within the State of Michigan they were used as incidental to, in the course, and as a part, of their railroad business, while the sleeping cars used and operated in this State other than by railroad corporations are used and owned by corporations or institutions solely in the carrying on of a sleeping car business over lines of road owned by railroad corporations under contracts with such corporations.

(c.) That he denies, that said act purports to authorize and would result in the application of a tax rate to the assessed value of the property of the several companies enumerated in said act, different from and higher than the tax rate applied to the property of others in the State of Michigan of the same actual and assessed value, situated in the same place, subject to the same political jurisdiction and existing under the same circumstances.

That the fourteenth amendment to the Federal Constitution permits and authorizes the classification of persons, corporations and their property for the purposes of taxation, with the sole limitation that such classification shall operate uniformly upon persons, corporations and property similarly situated, and the constitution of the State of Michigan permits and authorizes the classification of such corporations as shall be selected by the legislature to be taxed by a State board of assessors, *by themselves* and the imposition of one rule of taxation as to such corporations and another rule as to the property of persons and corporations not so taxed. That the classification made by act 173 of railroad and other corporations and associations therein enumerated and made subject to its provisions, and the application to such corporations of a method of assessment and taxation different from that to which other property throughout the State is subject, constitutes a proper and legitimate classification of such corporations and their property for the purposes of taxation and such classification is based upon sufficient differences in the character of such corporations and the property owned and business done by them from the corporations, persons, property and business subject to taxation locally throughout

the State, as to warrant the imposition of a different system and rate of taxation, as applied to such corporations, so required to be assessed and taxed by a State board of assessors, from such other persons and corporations and their property.

That from the foundation of the State a different rule of taxation has been applied to railroad companies than that applied to other corporations and property; such corporations being taxed specifically, the amount of tax being measured by gross earnings, or by the imposition of a specific rate upon the capital stock, and such different rule of taxation has been recognized and sustained by the State courts.

That said act 173 purports to and does tax only the property of the corporations subject to its provisions which is engaged in the carrying on of the particular business of the corporation or association, and that, in the case of complainant, the act purports, and intends to, (and the taxes imposed upon complainant's property are levied upon that basis,) tax only the property of the corporation engaged in carrying on its railroad business or held by it as a necessary incident of its business, and all real property owned and

70 which can be conveyed by such corporation under the laws of this State, which is not actually occupied in the exercise of its franchises or in use in the proper operation of its road or corporate business is liable to assessment and taxation in the same manner, for the same purposes and to the same extent as other real estate in the several townships and municipalities in which the same is situate.

That the said complainant is engaged in its railroad business as a public common carrier of passengers and freight to the full extent permitted by the laws of the State of Michigan and possesses the right of eminent domain and numerous other rights and privileges which are not possessed by individuals and corporations generally, and not possessed by street railway and other corporations which it cites as examples of similar corporations, and that there is not, to the best information and belief of this defendant, any corporation except those organized as railroad corporations, copartnership, association or individual engaged in carrying on such a general railroad business within the State of Michigan as a public carrier of passengers and freight and owning or operating lines of railroad in the same manner as is the complainant or subject to be classified with the complainant and other similar companies and corporations for the purposes of taxation.

That under the constitution and the statute, while a different system of assessment and taxation is provided for the corporations and associations subject to assessment and taxation by a State board of assessors, and their property, such system places such corporations upon the basis of equality in the amount of taxes required to be borne by such corporations with the property of other persons and corporations; all property being required to be assessed at its cash value and the amount of the tax to be spread upon corporations

subject to assessment and taxation by a State board of assessors being at the same rate as the average rate imposed upon other property upon which ad valorem taxes are levied for State, county, township, school and municipal purposes.

71 That if any inequality, as between the class of property and corporations required to be assessed by a State board of assessors, and the property and corporations and persons required to be locally assessed exists, either in rate of taxation, in the character of the assessment, or in the amount of taxes levied, or any discrimination has resulted in the taxation of either class, such inequality and discrimination or difference in rate has not arisen from the provisions of said act 173 or the constitutional provisions, but, is the result of and exists by reason of the action of the officers charged with the administration of such law and the duty of assessing the property of the State, including that of the corporations subject to act 173, and the determination of the rate of taxation thereon.

(d.) That he denies, that under the provisions of said act the rate of taxation to be imposed upon the property of the companies therein enumerated depends upon the collective result of proceedings of county, township, school, and municipal boards, bodies and officials having only local jurisdiction and having no authority or power over property outside of their respective territorial jurisdictions and within the limits of whose several jurisdictions said complainant neither has nor since 1901 has had any property whatsoever; that such county, township, school and municipal boards, bodies and officials neither have nor could have any legislative or administrative authority or power over the property of said complainant or others outside their respective territorial jurisdictions, and admits that such local boards, bodies and officials do not represent said complainant or the property belonging to it situated wholly beyond their jurisdiction and are chosen by and act solely for the persons and property within their local jurisdiction, but denies that said complainant and others outside their jurisdiction have no right to appear or be heard before such local boards, bodies or officials, and that said complainant and others beyond their respective jurisdictions have no relief from their action at law or in equity.

72 But says that the rate of taxation required by said act 173 of the public acts of 1901 to be imposed upon the property of the said complainant is fixed and determined by constitutional and legislative action and is not made to, and does not, depend upon the result of proceedings of county, township, school and other municipal boards and bodies.

That in and by said act the legislature of the State of Michigan has determined that the rate of taxation to be imposed upon the property of said complainant and the other corporations subject to taxation, under the provisions of said act by a State board of assessors, shall be the same rate that is imposed upon other property throughout the State subject to an ad valorem assessment for the raising of taxes for State, county, township, school and municipal purposes, and

that by the constitution and the statute the rate of taxation to be imposed upon the property of corporations subject to the provisions of said act 173 is measured by, and equal to, the average rate assessed throughout the State on property subject to ad valorem assessment for the raising of taxes for State, county, township, school and municipal purposes.

That no county, township, school or municipal board or body, other than the legislature and the State board of assessors, is given or has any authority over the rate of taxation to be imposed upon said complainant and the corporations subject to taxation by said act 173, and such rate of taxation is not and cannot be directly affected by any act or proceeding of any county, township, school or other municipal board or body appointed for that purpose, although the rate of such taxation is influenced by the action of county, township, school and other municipal boards and bodies, taken and had within the legitimate and legal duties of such boards, in imposing taxes upon the property subject to their several jurisdictions.

73 That he does not admit that said complainant cannot be heard and has no relief at law or in equity against the action, whether legal or illegal, of the several county, township, school and other municipal boards and bodies within the State of Michigan charged with the duty of making and levying assessments and imposing taxes upon the property of this State, other than that subject to taxation by a State board of assessors for State, county, township, school and municipal purposes and says that said complainant and the other corporations whose property is subject to assessment and taxation by a State board of assessors at an average rate dependent in amount upon the taxes levied throughout the State upon property by local boards and assessing officers, would have full authority to appear and be heard before the several reviewing and other local boards and officers and the board of State tax commissioners, and would have equal authority with individuals and other corporations whose interests would be likewise affected, to redress illegal action of such boards and officers in the court.

(c.) That he denies that no opportunity is given to said complainant or others, and that they have no right, to appear or to be heard before any of the several county, township, school or municipal boards, bodies or officers within whose territorial jurisdiction said complainant and such others have any property, upon or concerning any action of such board, bodies or officials upon which depends the average rate of taxation applicable under the terms of said act to the property of said complainant and others, but says that he believes that the said complainant, and any other corporations subject to taxation under the provisions of said act 173 at the average rate therein provided for, would be entitled to appear before any of the several county, township, school or municipal boards, bodies or officials in the several municipalities, of the State, whether such corporations had property subject to the jurisdiction of such boards or officers or not, and be heard respecting any and all matters which

might or could affect such average rate, and that should it be held that no such opportunity for hearing is given, then and in such case, as this defendant is advised and believes, the said complainant and other corporations similarly situated, have no constitutional right to a hearing before such boards or officers.

That he denies that as such the act makes the amount of tax to be imposed upon the property of said complainant and such others to depend upon the action of said county, township, school and municipal boards, bodies and officials and in such action no account is taken or can be taken of the rate of taxation, or of the amount of taxation which is or which ought to be imposed upon the property of said complainant and such others because of the needs of the State or the public interests, in respect to the purpose to which, under the terms of said act 173, the moneys raised by such taxation are to be devoted. For further answer to this paragraph defendant respectfully refers to paragraph 4-g, pages 24, 25.

(f.) That he denies, that no opportunity is given under the terms of said act to said complainant or others for any hearing upon the question of the rate of taxation, or the elements required by said act to enter into the average rate therein called for.

But says that the said rate of taxation is fixed by the legislature in the exercise of its political functions to be the average rate of taxation that is imposed upon property locally assessed for said county, township, school and municipal purposes; that the ministerial function is conferred upon the State board of assessors to reduce this rate to certainty by dividing the aggregate taxes assessed for State, county, township, school and municipal purposes by the aggregate assessed valuation of the property upon which such taxes are assessed, and that as the duty imposed upon this board is ministerial, and the result could not be affected by notice and opportunity for hearing, the said complainants are deprived of no right by not being accorded such hearing; that in case the said State board of assessors sought to act illegally or beyond its jurisdiction

to include in the basis of reaching such average rate any element not provided for by law, the said complainant and such others would have full authority to contest the proceedings and method by which such rate was ascertained and determined, in the courts and in case such rate was not ascertained and determined in accordance with law and their constitutional rights, to compel its reascertainment and redetermination in accordance with law.

(g.) That he denies, that said law purports to authorize the imposition of taxes upon the property of said complainant and such others without the exercise of any legislative judgment upon the rate of taxation to be imposed or upon the need of the State, in any year, of the amount of money to be paid as taxes under said law, for the purpose to which such money is to be devoted under the terms of said law, but says:

That said act 173 does not dispense with legislative judgment as

to the needs of any years, but that the same constitutes a legislative, and the constitutional provision under which the said act was enacted constitutes a constitutional determination that the amount of taxes which will be realized from the operation and enforcement of said act 173 will, together with other sources of revenue provided and to be provided, be sufficient to the needs of the institutions of government which are supported by the funds derived from said act.

That it has been the uniform practice of the State for upwards of sixty years to impose taxes by the imposition of a rate per cent. upon property and business, and that taxes imposed in such manner, have, in numerous instances, been sustained by the State courts. That instances of taxation of this character are found in the specific taxes which have, since the foundation of the State, been imposed upon business and privileges, and the taxes which have been imposed for the benefit of certain funds at a specified rate, to-wit, the one mill tax, for the benefit of the primary school fund, the 76 one-quarter mill tax for the benefit of the university, the one-sixth mill tax, for the war loan sinking fund, and the military tax of a certain number of cents per capita, to be spread on property.

That under and by virtue of the constitution, the rate of tax which the legislature is required to impose upon the property of corporations subject to assessment by a State board of assessors, is required to be the average rate levied upon other property upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes; which is a constitutional determination that such rate levied upon the property subject thereto would be suited to the needs of any year in which the same was imposed.

(h.) That he admits, that under the general laws of Michigan existing at the time when said act 173 was passed and ever since existing, the personal property of all inhabitants of Michigan, other than the companies enumerated in said act 173, includes the credits of such persons for purposes of taxation with a deduction for debts owed when deduction therefor is claimed but does not admit that the law providing for the deduction of said debts from credits is constitutional, and denies that said act No. 173 requires taxation of the credits of the companies therein enumerated without any deduction whatever, and denies, that in the reports made by said complainant to the said State board of assessors in the year 1902 pursuant to the terms of said act 173 of the public acts of 1901, it declared and returned to said State board of assessors, as the fact was, that it had credits owing to it and debts owing by it in the amounts set forth in said bill of complaint (par. 4-h, pp. 19 and 20); that these reports and returns of said complainant were before said Freeman, Dust, Sayre and McLaughlin at the time of, and constituted part of the data in the hands of said Freeman, Dust, Sayre and McLaughlin concerning said assess-



ments put by them upon the property of said complainant; that the existence of said credits and debts was in no way disputed by or before said State board of assessors; that such credits were assessed by said Freeman, Dust, Sayre and McLaughlin as an undivided part of the total property of said complainant, and that in obedience to the terms of said act 173 no deduction from the value of said credits or of any of the property of said complainant was made on account of debts in the aforesaid alleged assessments of such property, but says:

That if said act 173 requires the taxation of the credits of the companies therein enumerated without any deduction whatever, and at the same time the general laws of the State of Michigan existing at the time and since existing, permit the deduction of debts from credits in reaching the amount of property belonging to persons and corporations for the purposes of taxation, such application of different rules for the taxation of the property of corporations subject to taxation by act 173 from that applied to the other corporations and the individuals owning property throughout the State, constitutes a proper and legitimate classification, based upon real, inherent and material differences in the nature of the corporations and the property owned by them.

That in assessing the property of the complainant and the several corporations subject to assessment by a State board of assessors under the provisions of said act 173, the said State board of assessors did not include in such assessment the credits belonging to the said complainant and such other companies, and said complainant and such other companies, although given full opportunity to be heard before the said State board of assessors, acting as a board of review upon the assessment made upon its property, did not make application to have its or their debts deducted from its or their credits and made no objection to the said assessment of its said property on the ground that debts were not deducted from credits.

That if the said complainant possesses any credits they constitute a part of its railroad business and its railroad property, acquired and used in the carrying on of its railroad business and are, as he believes in fact, the uncollected proceeds of such business, and as such, are properly classified with other railroad property, in making classifications of property for the purposes of taxation and the application of a different rule thereto than is applied to the credits of individuals or corporations differently situated does not constitute a discrimination.

That in case it should be determined that the legislature, in the enactment of said act 173, should have accorded to the railroad and other property of corporations therein required to be assessed thereunder, the same privilege of having its debts deducted from its credits as accorded to the property subject to ad valorem assessment for State, county, township, school and municipal purposes, then and in such case the provisions of the general tax law of the State of Michigan purporting to permit and authorize the deduction from

credits is invalid, as violating the provision of the State constitution that "the legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law," (§ 11, art. 14), as such statutory provisions permits and authorizes the deduction of debts from credits, but does not permit the deduction of debts from either personal property or from real estate.

(i.) He denies, that said act permits and requires taxation in the State of Michigan of property belonging to the companies therein enumerated which is situated outside of the State of Michigan, and that

(j.) Said act purports to treat and tax, as if it were in the State of Michigan, a portion of the property of railroad companies situated outside of Michigan, and not used as a part of a railroad or in connection with the operation of a railroad to be determined by the relation which the number of miles of main track within the

79 State of Michigan of the company owning such property bears to the entire mileage of the main track of such railroad company both within and without Michigan.

That said act does not purport to tax, or permit or require the taxation of any property which is situate outside of the State of Michigan, but permits the said State board of assessors, in determining the value of the property of railroad and union station and depot companies in this State, which own, lease, or operate lines partly within and partly without this State, to be guided by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without this State; that the said act purports to tax only property within the State of Michigan, and the mileage without the State is used simply as a basis for determining the value of the Michigan property.

That while the said complainant was authorized to, and did, appear before the said State board of assessors in relation to the assessment of its property, it made no showing that the determination of the value of its property in this State upon a mileage basis was unfair or that the portion of its property in other States was of greater value or possessed of greater earning power than its property situate within this State, and that the said State board of assessors in its assessment of the property of said complainant included no property of said complainant situate beyond the jurisdiction of the State whether real or personal and whether engaged in its railroad business or otherwise, and all facts which enhanced or augmented the value of any portion of complainant's property situated beyond the limits of the State which would render the use of an absolute mileage basis unfair, were taken into consideration in making such assessment; and no facts existed which were not taken into consideration by said State board of assessors in making said assessment which would subject to taxation in this State a larger portion of complainant's property than is actually situated here.

80 (k.) That he denies, that said act 173 is invalid because it contravenes the provisions of the fourteenth amendment to the Constitution of the United States, which forbids the State to deprive any person of life, liberty or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws, in that, viz: The laws of the State provide for the equalization of the assessment of the property of other property owners who are not included within the taxation imposed by said act 173, where such assessment affects the rate or amount of taxation to be imposed upon the property of such owners, to the end that none of such persons shall bear an unjust, unequal, or unlawful rate or burden of taxation by reason of an improper, unjust, unequal or unlawful assessment of his property, or the property of others, while said act No. 173 contains no provision for and does not permit the equalization of the assessment of the property of said complainant and such other companies included within said act and the assessment made upon the other property of the State, although the rate and amount of taxation to be imposed upon said complainant and such other companies are determined by the assessment of said other properties of the State, and the assessment of the property of said complainant and said other companies, and such rate and amount would be affected by the improper, unjust, unequal or unlawful assessment of said other property of the State, and the property of said complainant and said other companies, and by the inequality in the assessment of such other property and of the property of said complainant and said other companies; and denies that protection is thus afforded by the laws of the State to other property owners of the State against unlawful, unjust and unequal taxation, which is denied by said act No. 173 to said complainant and such other companies, whereby said complainant and such others are discriminated against, but shows that by reason of the different character of said complainant and its said property, it is subject to be classified separately, from such other property, for the purpose of assessment and taxation, and being so subject to separate classification may be subjected to different rules of assessment and valuation.

81

5. That he denies, that said act 173 of the public acts of 1901 is invalid because, contrary to the provisions of article fourteen of the amendments to the Constitution of the United States, it deprives said complainant and the other companies enumerated in it of their property without due process of law and denies to said complainant and such other companies the equal protection of the laws; and denies, that said act 173 is likewise contrary to section 8 of article 1 of the Constitution of the United States, in that it is an unlawful attempt to regulate commerce among the several States; that he admits that said complainant and many of the other companies in Michigan to which said act purports to apply have at the time of the passage of said act and ever since owned and operated their railroads in Michigan as a part of a continuous railroad in many States,

upon which at all times commerce between such States has been conducted, but denies that said complainant and such other companies owning railroads in Michigan have at all times had both real and personal property of large amount and value in other States than Michigan which was not a part of or used in connection with their respective railroads.

6. That he denies, that said act 173 is repugnant to the provisions of section 4, article 4 of the Constitution of the United States, by which the United States guarantee to every State a republican form of government, for the reasons among others set forth in subdivision (d) of division 4 of said bill.

7. That he denies, that if sections 10 and 11 of article 4 of the constitution of Michigan, as amended by joint resolution during the extra session of the legislature of said State held in the year 1900, and by vote of the people ratifying such amendment at the general election held in November, 1900, be so construed as to authorize the enactment of said act No. 173, then said sections of the constitution of Michigan are repugnant to the provisions of article fourteen of the amendments to the Constitution of the United States forbidding any State to deprive any person of property without due process of law or to deny to any person within its jurisdiction the equal protection of the laws, for the grounds more specifically set forth by reference to subdivisions (a), (b), (c), (d), (e), (f), (g), (h) and (k) in division 4 of said bill.

8. That he denies, that if sections 10 and 11 of article fourteen of the constitution of Michigan, as amended in 1900 aforesaid, be construed so as to authorize the enactment of said act No. 173, then said sections of the constitution of Michigan are repugnant to the provisions of section 4 of article 4 of the Constitution of the United States, whereby the United States guarantees to every State a republican form of government, for the reasons, among others, set forth in subdivision (d) of division 4 of said bill.

9. That he denies, that if said sections 10 and 11 of article fourteen of the constitution of the State of Michigan are held valid, then said act No. 173 is in violation of such sections of the Michigan constitution, for each of the grounds specifically set forth in subdivisions (a) and (b) in division 4 of said bill.

10. That he denies, that if said sections 10 and 11 of article fourteen of the constitution of the State of Michigan are valid, then said act 173 violates those sections, and it also violates the provisions of section 32 of article 6 of said Michigan constitution in that the stated provisions of the Michigan constitution require that said complainant should have a hearing upon the question of the rate of taxation to be imposed upon its property and that said act gives no right of hearing to said complainant before said State board of assessors or elsewhere concerning the rate of taxation upon the property of said complainant and such others, or concerning the elements required by said act to enter into such rate, but shows that the said rate of taxation is fixed by the legislature to be the average rate imposed upon property locally assessed for State,

county, township, school and municipal purposes, and that the ministerial function of arriving at such rate is imposed upon the State board of assessors which has no discretion in regard thereto, said rate being the result of a mathematical computation; that a hearing upon the ascertainment and determination of said rate before the State board of assessors could not affect the result and therefore notice and opportunity for hearing are unnecessary; that if the said State board of assessors proceeds illegally in ascertaining said rate or in including the elements which it uses in reaching the same, the said complainant and such others are entitled to redress such illegal action in the courts, and the said act furnishes ample opportunity for inquiry by said complainant and such others into the method and manner of ascertaining and determining such average rate and makes full provision for the reascertainment and redetermination of such rate in accordance with law.

11. That he denies, that said act 173 of the laws of 1901 violates section 10 of article 14 of the constitution of the State of Michigan authorizing the legislature to provide for the assessment of the property of corporations at its true cash value by a board of assessors, in that said act provides for the assessment of the property of certain corporations named in said act to the exclusion of all other corporations in the State, of which there are many, and says that said section 10 of article 14 of said constitution properly construed in the light of the history and purposes of its enactment, permits and authorizes the legislature to provide for the assessment by a State board of assessors of the property of all corporations or of a limited number or class or classes of corporations, at its option, and that it was not contemplated or intended by said provision of the constitution that if the legislature should provide for the assessment of the property of certain corporations by a State board of  
84 assessors it must at the same time provide for the assessment and taxation by the same method of the property of all corporations.

That prior to the adoption of said act No. 173 of the laws of 1901 railroad corporations were taxed specifically at a certain rate per cent. upon their gross earnings, which said rate was claimed to require the railroad corporations of the State to pay less than their share of the public burden, and the proposing and adoption of said amendments to sections 10, 11 and 13 of article XIV of the constitution, were the result of agitation extending over a long period of years, and for the purpose of placing the railroad and other corporations enumerated in said act 173 upon the same basis for the purposes of taxation as to the amount of the tax to be borne as the other property of the State; that, as is indicated by the proclamation of the executive convening the legislature in the special session which proposed these amendments to the constitution and the executive message to that legislature (October, 1900, as well as by the proclamations convening and messages to previous sessions of the State legislature), the real purpose of the amendment was to pro-

vide a system by which the railroad and other corporations, at the time of the adoption of the amendment, paying specific taxes, should be compelled to pay a tax levied upon the value of their property at the same rate as that borne by the other property of the State.

12. That he denies, that said act No. 173 violates section 11 of article XIV of the constitution of the State of Michigan and denies that said section of the constitution requires the legislature to provide an uniform rule of taxation, except upon property paying specific taxes, but says that said article requires the legislature to provide an uniform rule of taxation, except upon property paying specific taxes, except that the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State board of assessors, and that by the terms of said constitutional provision the legislature is authorized to provide one rule of taxation for property subject to assessment by a State board of assessors, which is required to be uniform upon the class upon which it operates, and is required to provide an uniform rule of taxation upon all other property, except property paying specific taxes.

13. That he denies, that said act 173 violates the provision of section 12 of article XIV of the constitution of the State of Michigan requiring all assessments thereafter authorized to be on property at its cash value, and violates the provision of section 11 of article XIV of said constitution requiring the legislature to provide an uniform rule of taxation, except upon property paying specific taxes, in that, to-wit, under act No. 206 of the public acts of 1893 of said State, which, as amended, is the general tax law of the State, personal property includes for the purpose of taxation only the credits belonging to the inhabitants of Michigan over and above the amounts owed by them respectively, and denies that said act 173 requires the companies therein named to be taxed upon their credits without any deduction. For greater particularity regarding this objection reference is hereby made to paragraph 4-h 19 *et seq.* of this answer.

14. That he denies, that said act 173 violates section 14 of article XIV of the constitution of Michigan, which provides that every law which imposes, continues or revives a tax shall distinctly state the tax and the objects to which it is to be applied, and that it shall not be sufficient to refer to any other law to fix such tax or object. And denies that if said act is authorized by the constitution of Michigan then said constitution and said act contravene the provisions of the fourteenth amendment of the Constitution of the United States in that said constitution of Michigan and said act deny to said complainant and the companies to which said act applies the equal protection of the laws for the reason that by said constitution of Michigan every law which imposes a tax upon the property in the State of all other corporations, companies, associations and persons is required to distinctly state such tax, while said act No. 173 does not distinctly state the tax which it imposes; but says that said act 173 and the constitutional provision providing for the assessment of the property of corporations by a State board of assess-



ors distinctly states the tax and the object to which it is to be applied ; that such tax or object is not fixed by reference to any other law in contravention of said article of said constitution, and that no unjust discrimination against, or denial of equal protection of the laws to, the corporations subject to taxation under act 173 exists thereby.

15. That he admits, that said Freeman, Dust, Sayre and McLaughlin, acting as such State board of assessors, construed said act 173 as authorizing the amount of all taxes levied in the State of Michigan for highway purposes during the year 1902 to be included in the dividend used in determining the average rate of taxation required to be determined under said act, and did in their aforesaid taxation of the property of said complainant and others determine and use the rate of tax applied by them to the property of said complainant and others in accordance with their aforesaid construction of said act ; but denies that if said act is susceptible of such construction it violates section 11 of article XIV of the constitution of Michigan in that said section of the constitution does not authorize highway taxes to be included in the dividend used for the determination of such average rate, and in that said section of the constitution does not authorize the amount of highway labor taxes to be included in such dividend ; but says that it does not appear from said bill of complaint of said complainant that the said State board of assessors included in the dividend used for the determination of the average rate any highway labor taxes.

16. That he denies, that said act 173 violates said section- 10 and 11 of article XIV of the constitution of the State of Michigan in that it requires said State board of assessors to include as an element in the determination of the average rate of taxes at which the  
87 property of said complainant and such others is to be taxed under the terms of said act, ad valorem taxes for other purposes than State, county, township, school and municipal purposes, and that said Freeman, Dust, Sayre and McLaughlin in their taxation of the property of said complainant and others as aforesaid, did include as an element in their determination of the average rate of taxes which in their said taxation of the property of said complainant and others they applied to such property, ad valorem taxes for other than State, county, township, school and municipal purposes, but says that by a clerical error in enumerating the taxes to be taken into consideration in determining such average rate in said act 173, the word "other" was included (§ 13) and that such word should be eliminated from the act by construction ; that the said State board of assessors in determining such average rate took as a dividend only the aggregate taxes assessed and levied throughout the several municipalities of the State for State, county, township, school and municipal purposes and did not include in such dividend taxes for any other purpose, which fact is expressly stated in the certificate setting forth the method pursued by the said State board of assessors in reascertaining and redetermining its average

rate, which is set forth in full in said bill of complaint (page 6, paragraph a); and that as this defendant is informed and believes there are no ad valorem taxes which are assessed within this State other than those assessed for State, county, township, school and municipal purposes.

17. That he denies, that said act 173 is repugnant to the constitution of the State of Michigan in that it purports to authorize the imposition of taxes upon the property of said complainant and others without the exercise of legislative judgment upon the rate of taxation to be imposed or upon the needs of the State in any year of the amount of money to be paid as taxes under said law for the purposes to which such money is to be devoted under the terms of said law, but says that said tax so imposed upon said complainant is fixed and determined by the constitution itself, which contains no applicable requirement of the exercise of legislative judgment upon the rate of taxation to be imposed or upon the need of the State in any year as a prerequisite to the levying of a tax.

18. That he admits, for the purposes of this case, that said complainant has paid to the treasurer of the State of Michigan the taxes accruing to said State in the year 1903 in the amount set forth in paragraph 18 of said bill of complaint, computed in accordance with the terms of section 3 of article 3 of act 198 of the Session Laws of 1873, as amended, being section 6277 C. L. 1897, but says that said act 173 and the constitutional provision under which it was enacted, is legal and valid and that said complainant is liable to the full payment of the taxes assessed upon its property thereunder.

19. That he admits that this defendant claims and asserts that there is due from said complainant on account of the taxes mentioned in paragraph 2 of said bill the sums set forth in paragraph 19 thereof in addition to the sum of money heretofore paid by said complainant, and demands of said complainant that it forthwith pay such additional amount of taxes which he denies is grossly excessive, extortionate, unjust or illegal, or is in violation of the rights secured to said complainant under the Constitution of the United States and the constitution and laws of the State of Michigan.

20. That he admits, that the matter in dispute in this suit exceeds the sum of two thousand dollars, exclusive of interest and costs, but denies that said complainant has no remedy in the premises at common law and can obtain relief only through a court of equity, but admits that this defendant unless such tax is paid, or unless restrained by this or some other court, will proceed to enforce the said demand of the State of Michigan for said taxes against the property of said complainant by distress and by seizure and sale of said property.

89 (21.) This defendant further answering says that the said complainant, The Michigan Central Railroad Company, prior to December 30, 1901, existed under and by virtue of act No. 42 of the session laws of 1846, entitled "An act to authorize the sale of the Central railroad, and to incorporate the Michigan Central Rail-

road Company," and acts amendatory thereto, that said act, which constituted the special charter of the said complainant, contained a provision authorizing the State to alter, amend or repeal the same at any time after the expiration of thirty years from its passage, by a vote of two-thirds of each branch of the legislature, provided said company be compensated by the State for all damages sustained by reason of such alteration, amendment or repeal; that at a special session of the legislature of the State of Michigan, held in October, 1900, the said charter of the said complainant was repealed and provision was made for the institution by said complainant of a proceeding for the recovery of damages sustained by reason of and resulting from such repeal; that by said act repealing said special charter, it was provided that the right of said company to receive compensation from the State on account of its repeal should not be prejudiced by the voluntary surrender of its charter and its reorganization prior to the thirty-first day of December, 1901, under the provisions of section 6225, compiled laws of 1897 (No. 2, October special session, 1900).

By a certificate executed on the 4th day of December, 1901, and filed on the 30th day of December, 1901, in accordance with the provisions of said section 6225, C. L. 1897, said complainant voluntarily surrendered its special charter and incorporated under the general railroad law, that upon such incorporation, the said complainant became a new corporation, subject to the provisions of the said general railroad law as then existing and to the provisions of all other statutes of the State of Michigan, including said act 173 of the public acts of 1901, and sections 10, 11 and 13 of article XIV of the constitution of the State of Michigan as amended then in force; that the said organization of the said complainant under the general law was not coerced, compelled or required by the State as a prerequisite to the enjoyment of property rights but was voluntary upon the part of said complainant, and that by so voluntarily incorporating under the general railroad law, the said complainant accepted its provisions and the provisions of said act 173 and of sections 10 and 11 of article XIV of the constitution, as amended, as a part of the law of its incorporation, and became subject thereto, without authority to question their validity or to object to their constitutionality.

This defendant therefore submits that said act 173 of the public acts of 1901, and the acts and doings of the said State board of assessors and the proposed action of this defendant thereunder, are valid and constitutional and that the injunction prayed for in said bill of complaint be denied; and this defendant prays the same benefit from this his answer as if he had pleaded or demurred to said bill of complaint, and asks to be hence dismissed with his reasonable costs and charges in this behalf sustained.

PERRY F. POWERS.

CHAS. A. BLAIR,

Attorney General of Michigan,

Solicitor for Defendant.

ROGER IRVING WYKES, Of Counsel.

91 STATE OF MICHIGAN, }  
County of Kent, } ss:

Perry F. Powers, auditor general of the State of Michigan, being first duly sworn, deposes, and says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true, except as to matters therein alleged to be on information and belief, and that as to such matters he believes it to be true.

ALICE WATERS,  
Notary Public, Kent County.

The answer was filed July 21, 1903.

92 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
vs. }  
PERRY F. POWERS, Auditor General of the State of Michigan, }  
Defendant. }

And now comes the said defendant, (previous permission being granted by said court,) and amends his answer heretofore filed in said cause by inserting in paragraph 2-b thereof, at the end of and following said paragraph as it now stands, the following:

"And particularly that the said assessment by the said State board of assessors of the property of the said complainant, The Michigan Central Railroad Company, as appearing on the said assessment rolls, is not at, and does not represent, the true cash value of the property of said company, used in operating and carrying on its railroad business within this State, subject to assessment and taxation by the State board of assessors, as required by statute, but that the property of the said complainant has been assessed, and appears on the said original and duplicate assessment rolls, at an amount much below its true and actual cash value; that the said assessment and tax rolls, and the said assessment of the property of the said complainant appearing thereon, do not express or represent the true and honest judgment of the said State board of assessors, or the true and honest judgment of its several members; that he believes, and charges the truth to be, that the said under-assessment of the property of the said complainant by the said State board of assessors, is not the result of inadvertence, mistake or accident, but that such under-assessment and under-valuation was intentionally and willfully made."

PERRY F. POWERS.

CHAS. A. BLAIR,  
Solicitor for Defendant.  
LOYAL E. KNAPPEN,  
CHAS. E. TOWNSEND,  
ROGER IRVING WYKES,  
Of Counsel.

STATE OF MICHIGAN, }  
 County of Ingham, } ss:

On this 28th day of April, A. D. 1904, personally appeared before me Perry F. Powers, who, being first duly sworn, deposes and says that he is auditor general of the State of Michigan, that he has read the foregoing amendment to the answer by him subscribed and knows the contents thereof, that the same is true of his own knowledge except as to matters therein stated to be on information and belief and that as to those matters he believes it to be true.

GEO. W. FREEMAN,

Notary Public, Ingham County, Michigan.

My com. expires Feb'y 13, 1905.

The amendment was filed April 29th, 1904.

94 Stipulation Applying Testimony Taken in the Michigan Central Case to Other Cases.

A stipulation was entered into in each of the railway tax cases, applying the testimony taken in the case of *The Michigan Central Railroad Company vs. Perry F. Powers*, auditor general, to each of those cases, and permitting the taking of testimony in that cause relevant to such other cases. These stipulations were as follows:

"It is hereby stipulated between the parties to the above entitled cause, by their respective solicitors, that the testimony in said cause shall be taken orally before Charles L. Fitch, general examiner of said court, within the periods of time hereinafter limited, and otherwise in accordance with the rules and practice of said court.

The complainant shall take its evidence in support of its bill of complaint within three months from September 1st, 1903; the defendant shall take his evidence within three months thereafter; the complainant shall take its evidence in reply within one month thereafter, and the defendant shall then have ten days within which to put in any further evidence which may be admissible under the rules and practice of said court.

It is further stipulated that all the evidence taken in a certain cause involving the validity of act 173 of the public acts of 1901 now pending in said court, wherein *The Michigan Central Railroad Company* is complainant and said defendant is defendant, may be read in evidence in this cause, so far as the same may be relevant, material and competent to the issues in this cause.

It is further stipulated that either party, within the time limited for taking its proofs, may, with the consent of the solicitor of said Michigan Central Railroad Company, introduce proofs relevant, material and competent to the issues in this cause in said cause wherein said Michigan Central Railroad Company is complainant, although such proofs might not be competent, material or relevant in said last mentioned cause.

Said court may forthwith enter an order to the foregoing effect."

95 FRED M. TWISS, on the part of complainant, testified as follows :

Direct examination by Mr. BUTTERFIELD :

My residence is in Hillsdale, Hillsdale county, in this State. I have been farmer, school teacher, painter and attorney; also supervisor for two terms of the fourth ward of the city of Hillsdale. I am now chief clerk of the board of State tax commissioners, and have been since some time in March, 1901. I was employed as secretary by the board of State tax commissioners prior to that time, from the time of its organization. The act under which the commission was organized is sec. 154 of the laws of 1899. When it was first organized in July, 1899, the members were Milo D. Campbell of Coldwater, A. F. Freeman of Manchester, and Robert Oakman of Detroit. The first work of the commission was directed more particularly to the assessment of personal property in various parts of the State. The first work of the commission with reference to ascertainment of value of property upon which ad valorem taxes were assessed as compared with assessed value was directed particularly to assessment of personal property—the first reviews of magnitude being held in the city of Manistee and in the upper peninsula in the counties of Dickinson, Gogebic, Houghton, Marquette and Iron.

(Objected to by Mr. Blair as immaterial.)

The first work of this character was in the year 1900. The purpose of reviews in 1900 was to bring the assessed valuation of certain properties that were cited before the commission in those various communities to their true cash value, and the examination referred in each instance to specific properties.

(Objected to as immaterial.)

96 The matter published in the document entitled "Statistics of Real Estate Transfers in the State in the Year Ending June 30, 1899," was obtained and tabulated some time after the organization of the commission in 1899.

(Objected to as incompetent and immaterial.)

The commissioners formulated a plan by which they required the registers of deeds in each county to send them a record of all real estate transfers for the year ending, I think it was June 30, 1899; in that blank the names of the parties to the transfers were given, the date, the liber, the page and the consideration mentioned in the deed and the description of the property.

(Objected to by Mr. Blair as incompetent, hearsay and relating to remote period.)

Then I think the county treasurers were requested to set opposite each valuation the assessment of that particular parcel for the year 1899.



(Book referred to marked Exhibit A.)

That document contains the information obtained by the commission. We have in the office of the board of State tax commissioners, the original blanks, as they came from the county registers of deeds and treasurers.

After that information was obtained, a computation of the percentage of the assessed to the true value as shown by these reports was made under my direction by the different clerks in the office. Those percentages are shown in Exhibit A.

(Objected to as immaterial by Mr. Blair.)

The tax commission, or board of State tax commissioners, has been enlarged from three members to five.

The commission at the time it was enlarged consisted of Freeman, McLaughlin and Oakman. Mr. Dust was substituted for Mr. Oakman during the legislative session of 1901, and the new members added were Manville Jenks of Ishpeming and Ira T. Sayre of Flushing. Jenks is not now on the board.

Angus W. Kerr of Calumet was appointed in his place.

97 In 1901 the work of the commission which had to do with the ascertainment of the true cash value of the property in the State as compared to its assessed valuation was the same class of general work that had taken place in 1900 with reference to personal property, and the commission further endeavored to secure more definite information in regard to the assessment—or the comparison of actual to assessed value of real estate, by causing an examination of real estate in every county in the State to be made. The men engaged in that work were furnished with the original transfers that were taken by the registers of deeds referred to in Exhibit A. They were instructed so far as possible to verify the considerations mentioned in the deed; no verification had been made of those considerations previous to that time; that table had been made up upon the figures as they came to the office with this exception; that the reports from each county were gone through with and certain transactions were taken out of it where they appeared to be improbable upon their face. All considerations of one dollar were stricken out and I am not certain, but I think all transfers which showed upon their face that they were made through the sheriff of the probate court or through circuit court commissioners, but when the men were sent out for the examination of 1901 they were instructed to verify those considerations and also to make further examinations of properties in each assessment district where the transfers were very few in number.

I should say 15 or 20 men were engaged in that work, largely under my supervision. I was not secretary at that time. I was chief clerk, Mr. Gullifer succeeding me as secretary. My recollection is that we have a report from every county but three.

The commission tabulated the information obtained by this field

examination in 1901. Exhibit F attached to the bill of complaint contains the information by those examiners in 1901. This table contains the number of acres in each assessment district, that is, of the townships. It gives the acreage of the townships. It does not give the acreage in cities except where unplatted. The second column is the per cent. of assessed to actual value as determined by the examination of 1901. The third column is the real estate as assessed by the assessing officers. The fourth column is the personal property assessed by the assessing officer and the fifth column the total valuation of each district as assessed, and the sixth column the real estate as equalized; the seventh column personal property, and the eighth column the total of equalized valuation, equalized by the board of supervisors.

The commission ascertained from that information thus obtained the actual value of all real estate. The result of that computation and the statement of that ascertainment of value appear in table 85 on pages 374 and 375 in Exhibit F attached to the bill of complaint, for the year 1901, of most of the counties mentioned here, it is my recollection that that would not strictly apply to the figures furnished here for Houghton county and Marquette county. There was no examination made in Roscommon; the commission thought that if it was assessed for anything, it was high enough.

The table referred to on page 374 of Exhibit F in the bill of complaint includes both real and personal property. The personal property included in this table first is taken at its assessed valuation. The real estate that is included in that column, with the exceptions of those I have mentioned and the additional one of Keweenaw, which I see here, of which there was no report made would be valuation of the different counties of the State as based upon the examination made by our field men for that year. The computations were made by the direction of the commission and furnished to the State board of equalization for their guides.

The total valuation of the property in the State upon which ad valorem taxes were assessed for that year, as shown by the table which I have just described, was \$1,702,471,041.

99 (Objected to as incompetent, immaterial and irrelevant and that it is not the best evidence.)

The assessed valuation of that same property for that year was \$1,328,632,691.

(Same objection as last above.)

Q. How did the board obtain its information as to these assessed values?

A. The board required from each assessing officer in the State immediately after the work of the local boards of review is done, a statement showing the assessed valuation of the real and personal property, first as determined by the assessors, second as fixed by the board of review.

Q. And I take it that report was called for by the commission under the authority of the act under which it was appointed ?

A. Yes sir. There is a portion of the information in that table that does not relate to the values with reference to the acreage assessed. It was obtained from the auditor general's office.

Q. I ha-d you the report of the board of State tax commissioners and the State board of assessors, for the year 1902 and call your attention to table No. 5 on page 128, and particularly to the fourth column of that table headed, "Total real and personal assessed and reviewed, 1901, 1,335,109,918, and ask you if you can tell what occasioned that slight difference between the figures there and the figures in your second column of the report of the table on page 374 of the bill of complaint, I say it is only slight but it does not appear how it was accounted for.

A. I think the information relative to the assessment of the properties of the State is obtained from two different sources ; through the tax commission office and through the auditor general's office, and I think the column you show me in Exhibit F are the figures that were received at the auditor general's office and the compilation made by them ; while the figures you have shown me in  
100 the report of the commission are the figures that were compiled in our office, and that report that you handed me would have been compiled after the board of State tax commissioners had closed their reviews for the year 1901, and it is possible that a portion of that discrepancy is accounted for by raises they made subsequent to June.

Q. Contained in the auditor general's figures ?

A. Yes sir.

Q. I show you again the report of the commission for 1902, and table No. 5 on page 128, and ask you if that table contains the assessed value of the property of the State subject to ad valorem taxes for the year 1902.

A. It does as compiled by our office.

That value is \$1,418,251,858.

(Same objection.)

All of the objections made to the testimony in this record were made previous to the question being answered except where otherwise stated.

The commission ascertained and determined the true value of the general properties of the State subject to ad valorem taxes for the year 1902 to be \$1,715,000,000. Of course, I couldn't answer the question as you propound it as to what they determined ; that would be a matter for somebody else to answer besides me. They so reported it. The report appears on page 69 of the report of 1902. (Report of Board of State Tax Commissioners of Michigan, 1900, Campbell, Freeman and Oakman, marked Exhibit B. Report of Board of State Tax Commissioners and State Board of Assessors, Michigan, 1902, marked Exhibit C.)

(Objected to as incompetent and not included in any official duty of the board on the contrary determined by the supreme court to be without its duty and a mere usurpation upon its part wholly incompetent, immaterial and irrelevant.)

Exhibit C was mostly prepared under my supervision. The statement appearing on page 17 of that report, Exhibit C, reading as follows: "It would be impossible to enumerate the questions raised and the matters discussed at these meetings; but with them all we emphasized the importance of listing all properties subject  
101 to taxation and assessment of all at its cash value, endeavoring to point out that equal taxation and uniformity of assessment throughout the State can be accomplished in no other way; that while the old plan of assessing property at a percentage of its value prevails, and each supervisor uses his own judgment of the percentage to be applied in his district, there is danger of as many different percentages as supervisors in a county, and the property of no two counties will be assessed by the same standard of value" I think must be true. It sounds to me like Mr. McLaughlin's language.

(Objected to by Mr. Blair as immaterial and irrelevant.)

I think my experience in the work of the commission would lead me to the conclusion that there were very many different percentages of value in the various assessment districts of the State.

(Objected to by Mr. Blair as immaterial and irrelevant.)

I would not in any respect qualify the statement read from Exhibit C.

(Objected to as immaterial and irrelevant.)

The statement here shown me, as I remember it, is that while the method of assessing property at a percentage of value prevails, each supervisor uses his own judgment as to the percentage to be applied in his district. I would not say that each supervisor did that. It is intended in that statement to state that they make use of some percentage less than 100 per cent. in general.

Q. And will you please tell us the limits of those percentages, how low the lowest and how high the highest?

MR. BLAIR: I object to that also as incompetent, immaterial and irrelevant.

A. Well, I couldn't testify to that with any accuracy without consulting my record.

Q. I will ask you to answer the question after consulting  
102 Exhibit F attached to the bill of complaint.

MR. BLAIR: I renew my objection notwithstanding the enlightenment afforded by the bill of complaint.

A. The range according to this compilation seemed to be from 31.2

to 101, and that was in the case of the man who raised blooded cattle and that was in Delta county.

A. Are there not many instances where the percentage equals 100 per cent.

A. There are not.

Q. Up to the close of the year 1902, up to the end of the period covered by the report, Exhibit C, state in a general way how extensively you yourself were present at hearings when supervisors and assessing officers were examined before the board—were those instances many or few?

A. I was present at most of the hearings—I think I might say all of the hearings that have been held by the commission unless there were more than one held on the same day.

Q. State whether or not at those hearings the fact was brought home to the knowledge of the assessing officers that the property in their assessment district was assessed, in fact, at a percentage of its true cash value less than 100 %.

Mr. BLAIR: I object to it as immaterial.

A. It was as determined by our examinations.

Q. State whether or not those supervisors and assessing officers stated to your board and to yourself the percentage which they were making use of.

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant and not binding upon the State of Michigan in this litigation what any of the assessing officers may have said.

A. Such statements have been made by assessing officers to the commissioners in my presence or some one of them.

Q. To the commission or some one of the commission?

103

A. Yes sir.

Q. And tell us in a general way whether by a large number—or give us your best recollection of the number of assessing officers who have made that statement.

Mr. BLAIR: I object to that for the same reason.

A. I would not be able to answer that question I don't think, without consulting some list showing what reviews were held or in what counties we held the general reviews.

Q. In the hearings which you have referred to, where the assessing officers did state the percentage which they were making use of less than 100 %, were they official hearings held by the commission?

A. They were.

Q. And how were the assessing officers brought before the commission?

A. By a process provided by a section of the statute, creating the commission, or defining its duties rather.

## Cross-examination by Mr. BLAIR:

I was never a member of the board of tax commissioners. My duties as secretary were to keep the official records of the commission, attend to the correspondence and conduct such investigations preparatory to making the reviews as the commission directed. It was no part of my official duties to assess property or value property. As chief clerk of the board my duties are general supervision of the office force and largely the work of examinations, more so before when I was secretary, of properties for the purpose of ascertaining whether there is a review needed in a given locality or not.

104 I should qualify that by saying that it is in relation to personal property. The question of real estate is a matter that does not come within my personal supervision or examination, I do not take a personal examination of real estate very often.

There are approximately 1,300 assessing districts in the State of Michigan, including cities and the rural districts. Not familiar with real estate from personal knowledge, never having occasion to look at particular parcels, except in certain localities. Examined business properties in Port Huron, being about 200 descriptions.

I have been in a considerable number of them but wouldn't say half of them.

In the main my duties have been of a clerical sort, and so far as the valuations testified to here, as shown by computations, I have no personal knowledge of the accuracy of those computations except as it is derived principally from reports of others, from the reports of field men and from statements made by assessing officers and from the statements made and the action taken by the tax commissioners themselves. Reports of these field men were made for use before the State board of equalization, for the year 1901. The reports that had come to the board in 1899 were made a basis and then there were additional examinations, examinations of additional property made.

Those men commenced in May and they worked through May, June, July and a portion of August, 1901. There was no examination made in 1899, no systematic examination of real estate. I do not think it was deemed to be satisfactory by the board of tax commissioners. They regarded it as not as satisfactory as our examinations since have been because not so thorough in any given district. I wouldn't say that it was regarded as unreliable.

105 They regarded it sufficiently reliable that they reported it to the State board of equalization as a guide for their action. The State board of equalization accepted it in some cases and in some they did not.

Their valuation was considerably below the valuation fixed by the State board of tax commissioners.

Think in a majority of cases entire board attended general reviews, unless there were two hearings going on at the same time. Meaning by general review, a review of the entire rolls of the county



and on those occasions he had heard statements made by supervisors that they were assessing at a percentage below 100 and that in all such instances the board raised the valuation of the county and that whenever it came to the knowledge of the board at any general review that the property was being assessed at a percentage less than its true cash value, the board raised it to what the board considered to be its true cash value.

The board did so raise the valuation prior to the fixing of the average rate by the State board of assessors in 1902, prior to the 15th of September, in the counties of Bay, Saginaw, St. Clair, Macomb, Jackson, Kalamazoo, and five townships in Charlevoix. In addition to those that I have mentioned, Mackinac Island, the city of Mackinaw Island, and in the year 1901 a general review in the city of Holland. In all those instances the board raised the valuation to what it considered the true cash value. Prior to the fixing of the average rate in 1902 no general review was held in the city of Detroit and county of Wayne—though some special reviews. This county one of those which he includes as at lower percentage than cash value. There was a review held there in 1903.

The special reviews—there was one that I didn't call to mind this morning, and I think the first one that the commission held  
106 was in the city of Grand Rapids in which a large number of personal properties were examined there and increased to quite an extent. In the county of Manistee in the city of Manistee and in I think two townships—two or three townships there—there was something like five millions of dollars in personal property added to the rolls upon one review.

Q. How long, ordinarily speaking, was consumed in a general review?

A. Well it depends on the different localities and how many special properties are taken up at the same time.

General reviews in a county like Kalamazoo lasted four or five days. Occasionally those general reviews were held by one member of the board.

Under a decision of the supreme court of the State it was possible for general reviews to be going on in five counties at the same time.

Q. And how did the board proceed to ascertain whether the property was assessed at true cash value or not.

A. Do you mean at the meetings?

Q. Did the member who was holding a review get out and visit the property generally?

A. Not in an entire county, no sir.

Q. He did not make a very thorough examination in four days of a city like Kalamazoo, did he?

A. No sir.

Q. Then what did he base his estimate of value upon?

A. Largely upon the reports made by the field examiners.

Q. And these field examiners were not a high grade of men, were they, as a rule?

A. We called them so.

Q. You did?

A. Yes sir.

107 Q. Wasn't it a fact that the board did not consider them to be high grade?

A. Well I don't know what answer the board would make to that question.

Q. I mean from things that were said in your presence there from which you got an understanding of what the board thought about it.

A. Well perhaps we are not talking about the same examination. Which examination have you reference to?

Q. I mean the one of 1901.

A. I don't think—

We have some of the same men with us now that we had then and they are the best ones of the lot that we have. I don't think that the force of 1901 would average as high as they do today in intelligence and capacity in this kind of work. The knowledge of the tax commission was derived in the main from the reports of these field men, and if a field man made a mistake and the tax commission put a horizontal raise on to a county, that mistake would be perpetuated one year and exaggerated.

I don't think it was exaggerated, the discrepancies would remain the same as they were before.

The property was very much over-valued in some instances by the tax commissioners, I think. They fixed as their basis for determining whether property was 100% or whether it was 75, a comparison of the assessed valuation with what they determined to be the value of that property, the sale of property in a neighborhood, or where other pieces of property were located, determined largely the value of pieces that had not been sold. The selling value where conditions seemed to be normal was taken as a standard.

By the close of 1902 the commission had in its possession 108 the results of thorough examinations in the counties that I have mentioned as having had a general review that year.

The field men were instructed as a rule to consider the various elements which go to establish value. But did not do so in the three or four months consumed in the work of 1901.

#### Redirect examination:

The tax commission have power under the law to change valuations appearing upon assessment rolls in a majority of districts in the State from about the first of June until about the second Monday in October.

(Objected to by Mr. Blair as a question of law for the court)

In some localities in the State the local boards of review do not finish until later than that.

Q. What influence does the commission seem to exercise over the local assessors prior to the first of June, in each year?

Mr. BLAIR: I object to it as immaterial.

Q. I will change that. What influence did they attempt to exercise in the year 1902 prior to the first of June?

A. They met with quite a number, I couldn't say how many, and I can't recall just what counties but they met with the boards of supervisors in various counties in the State prior to the time the assessment rolls were closed advising them as to their duties and giving them the result of such examination as had been made under the direction of the commission previous to that time.

Q. And urging upon them, I take it, the importance of  
109 bringing the valuations up to the true cash value.

A. They always did that.

Q. Were you present at any of those meetings?

A. I was.

Q. Did you at any of those meetings hear these statements by the supervisors, that they were using a percentage of the true value.

A. I cannot testify that I did.

Q. Did it ever appear at those hearings that a percentage of the true cash value less than 100 was being used in those counties?

Mr. BLAIR: I object to it as immaterial, irrelevant and incompetent.

A. It did; that was the occasion for the visit.

Q. Now did the commission between the first of June and the first of October have a general review in all those counties that had been visited in this friendly way?

A. I would not say that it did, no sir.

Q. Then when you speak of a general review you are referring always to the event which took place between the first of June and the second Monday in October?

A. I am.

In speaking of general review, reference is had to the review which took place between the first of June and the second Monday of October. Has enumerated all counties in which general review held up to 15th of December, 1902, but general review held in 1900 in the city of Holland—figures as fixed at that review held in subsequent assessments.

In the city of Mackinac Island they did not maintain the figures fixed by the board, but did not fall back as low as they were  
110 before. Tax commission had not held more than one general review in same county up to December 15th, 1902. Before a general review could be held it was necessary to have the work of the field examiners done.

And there was no general review except in a county where the field examiners had worked.

With one exception all of the field men had had experience in the assessment of property, having been supervisors or assessing officers.

(Exhibits A, B, and C offered in evidence, subject to objection by Mr. Blair that — incompetent, immaterial and irrelevant.)

**Recross-examination :**

There were charges preferred against quite a number of assessing officers in the State in the fall of 1900. I think there have been no formal charges preferred in 1901 or 1902.

WILLIAM T. DUST, on the part of the complainant, testified as follows :

**Direct examination by Mr. ANGELL :**

I have been a member of the board of State tax commissioners since the early part of 1901. Prior to that time I had about seven years' experience as assessing officer in the city of Detroit. I have my opinion as to the value of properties in Michigan. Exhibit C, being the report of the board of State tax commissioners for 1902, has my signature.

Mr. BLAIR: Objected to as incompetent, immaterial and irrelevant.

111 Last spring litigation arose in the supreme court between the board of education of the city of Detroit and the State board of assessors. Attached to the bill filed by the Michigan Central Railroad Co. in this case as Exhibit E is what purports to be the answer of the State board, and I signed the original, of which that is a copy.

Mr. BLAIR: Objected to as immaterial, incompetent and irrelevant.

On pages 69 and 70 of Exhibit C appears the certificate of the State board of assessors in connection with the assessment of railroad property.

Q. Referring to that portion of the report found in the middle of page 17, Exhibit C, the statement "that while the old plan of assessing property at a percentage of its true value prevails and each supervisor uses his own judgment of the percentage to be applied in his district, there is danger of as many different percentages as supervisors in a county." Does that statement set out the facts with reference to this matter as you have learned them in your capacity as State tax commissioner?

Mr. BLAIR: Objected to as incompetent, immaterial and irrelevant.

A. Well, not entirely. There are a great many differences among the assessing officers as to the true cash value of property, and I would not care to say that there are no assessing officers who do not assess at the true cash value, but there are a great many percentages prevailing.

Q. You have found in the course of your investigation officially that very many of the assessing officers in the State have not assessed property at its true cash value as required by law.

A. As found by our examinations.

Q. Comparing the results of your examination with their assessment, proceeding upon the basis that yours was at the cash value and theirs were less, in very many instances?

112 Mr. BLAIR: I place upon the record my position with regard to this class of testimony in addition to what I have already stated, that while such evidence might be permissible in a case where the action of the State board of tax commissioners is called for, in a suit in equity like this where the allegations in the bill of complaint put in issue the values of the property in the State, that is an inquiry to which the findings of the State board of tax commissioners are not germane or appropriate.

A. Yes sir.

Q. Calling your attention to page 20 of this report, Exhibit C, speaking of the conferences with the assessing officers and the report you require from them, the report proceeds: "In many cases the assessors disregarding our suggestion, chose to take their own estimates of value and made no appreciable change from their old methods; but a large number profited by the information gained and made creditable efforts to place the property on the rolls at or near cash value." Calling your attention to that passage, is it a fact as you find it, that the assessors, despite your efforts, continued to assess at a percentage in many parts of the State?

Mr. BLAIR: I object to that question for the reasons given and on account of calling attention of the witness to a passage in a book for the purpose of examination.

A. I would say that the efforts on the part of the assessing officers in meeting the views of our commission as to cash values, tend in the right direction, that is, their assessments of last year and this year are better than they were the years previous.

Q. And was it a fact that, say on the first day of January, 1903, after your efforts of 1902, that a very considerable number of the assessments in the State were in the judgment of your board,  
113 its honest judgment, still far below the cash value?

A. They were still below the cash value based upon our examinations in that time.

Q. Could you give us any idea what proportion of the assessors of the State up to that time had put their assessments to what you deemed to be the true cash value, and what part had not?

A. No sir; I would not attempt to.

Q. You wouldn't attempt to classify them in that way?

A. No sir.

Q. I call your attention to paragraph 11 of the paper marked Exhibit E, that I show you, the answer in the board of education case, which reads as follows: "This respondent, namely, The State Board of Assessors, charges the truth to be that the undervaluation of the property of the State subject to ad valorem taxes for State, county, township, school and municipal purposes, throughout the State was not the result of accident, inadvertence or mistakes in judgment, but that such under-valuation of such property was in a large number of the municipalities of the State, intentional and general and that this practice of under-valuation had been in vogue in this State for a great number of years, and that if the court desires to examine the data upon which the foregoing statements are based, it will be furnished." Now I say, refreshing your memory by that passage, let me ask you how you have found the matter in your investigations as to whether this undervaluation was inadvertent, accidental or intentional.

Mr. BLAIR: I object to that question as incompetent, immaterial and irrelevant.

A. Well, there were some of each, some were through ignorance, some through carelessness, and some intentional.

Q. Is it in your judgment true that in a large number of  
114 municipalities throughout the State that such undervaluation was general and intentional?

A. I would not care to answer that. In the examinations had by the commission in examining the supervising officers, the assessing officers, in a great many instances they would insist that they had assessed at the true cash value, though our examinations and the transfers as verified by us would prove to the contrary; some would admit that they had assessed at a certain percentage, but a great majority of them would insist that they had assessed what they in their judgment thought to be the true cash value.

Q. Such men as that made a distinction between the actual value for selling purposes and the true cash value for assessing purposes, did they not?

A. The figures seem to show that.

Q. Was it the only explanation they could make?

(No response.)

Q. You are familiar, I apprehend, with the tables attached to this report which you signed in 1902, in a general way?

A. Just in a very general way—superficially.

Q. You heard Mr. Twiss' testimony as to the percentages figured out here, the differences between your judgment of the actual value and the assessed valuation?

A. Yes sir.



Q. Are you satisfied that the percentages as figured are substantially correct?

A. I am, yes sir.

Q. Now I call your attention to the fact that this Exhibit E about which we have just been speaking, and from which I have read you, is signed and verified by you and I desire to ask you this question with that before you: Do you desire in any way to qualify your statement which you and your associates made under oath in that paragraph, in what you have just stated?

Mr. BLAIR: I object to that as incompetent.

A. I wouldn't want to qualify it excepting to say that if this sets out that all the under-valuation is intentional, then I do want to qualify it, because, as I stated before, that some are a mistake of judgment on the part of the assessor; some are the result of indolence and carelessness and some of it was intentional.

Q. And is it true, as stated here, in order that there may be no misunderstanding about what you have testified to, that such under-valuation of property was in the larger number of counties in the State intentional and general?

A. I will allow that to stand.

Q. That is true?

A. Yes sir.

Q. I have now the original roll from which the certificate found on pages 69 and 70 of Exhibit C is a copy.

A. If that is a copy of this I will say this is my signature. I signed this. (Page 50 of the first roll marked Exhibit D.)

Mr. ANGELL: I offer in evidence this last exhibit which was identified by the witness, being Exhibit D.

Q. Are you able after comparison with the original Exhibit D, with pages 69 and 70, Exhibit C, to state whether the latter is a correct copy of the original Exhibit D?

A. Yes sir.

Q. Are the facts set out in the certificate which I have just read to you, and which you have examined, true as stated, in your own best judgment?

116 Mr. BLAIR: I will object to that as incompetent, and immaterial, the paper shows for itself and speaks for itself.

A. It was as ascertained by the examinations had.

Q. That was the deliberate judgment of your board on that basis on the date this paper was signed, December 12, 1902?

A. Yes sir.

Q. Mr. Butterfield calls my attention to the point that in handing you this book, Exhibit C, I failed to call your attention to this: To yourself and your associates as the board of State tax commissioners, and I call your attention to the signature at a later point, and perhaps I should show that to you. The signature that I showed you

was where you sat as a board of assessors, and that there may be no misunderstanding about it, the report to which I intended to call your attention is the one that ends at page 49, in the first instance. That is your report as a member of the State tax commissioners?

A. Yes sir.

Q. And to the matters set out in that report you subscribed your name and believed the things therein set forth to be true, did you not?

A. Yes sir.

Q. Now Mr. Twiss has stated in our hearing something about meetings of your commission with the boards of supervisors or with individual assessing officers from time to time when the question of their rate per cent. of assessment came up, did you hear his testimony about that?

A. I did, yes sir.

Q. What is the fact as to whether your commission, or you individually, have met with the local assessors and discussed with them the question in an official way of their percentage valuation; has such a thing taken place?

A. Yes sir.

Q. Many times?

117 A. Well at about every meeting that we have had we have had that subject up.

Q. As well when you have special meetings or special reviews as when you have general reviews?

A. Yes sir.

Q. What is the fact as to whether in such meetings, when you have been acting in your official capacity, the supervisors have admitted to you that they were assessing at less than what you deemed to be the true cash value?

Mr. BLAIR: I object to that.

A. I cannot remember any specific instance of that kind.

Q. You don't recollect specific instances of that?

A. No sir, not if you ask me to mention a particular supervisor, I couldn't do it.

Q. Can you state whether they have at any such meeting admitted to you that they were assessing at what they considered less than the true cash value?

A. Yes sir.

Q. They were local assessors?

A. Yes sir.

Mr. BLAIR: I object to that as hearsay and incompetent.

Q. That you do recall?

A. Yes sir.

Q. As to whether that has been infrequent in your experience?

A. It has been rare.

Q. That they would admit it?

A. Yes sir.

Q. But they have at times admitted it?

A. Yes sir.

118 Cross-examination by Mr. BLAIR:

(The roll for 1902 upon which the auditor general has actually proceeded to collect called to witness' attention and marked Exhibit F.)

The difference between the two rolls is the change in the rate as determined after the hearing is had. The rate in the second roll is established in accordance with the determination of the court.

I was appointed upon the tax commission during the session of the legislature of 1901, and have been actively engaged in the performance of its duties since May, 1901.

Has attended general reviews and made special reviews, and been engaged in carrying out the spirit of the act under which appointed, with the purpose of placing all property in the State upon a true cash basis, which was accomplished in numerous counties prior to fixing the average rate.

The supervisors of the State, as a rule, are men of reasonable intelligence, and of good social standing.

In a great majority of instances where discussions arise between members of the State board of tax commissioners and the supervisors, they insist that the values which they had placed upon the property were, in their judgment, the true cash values of the property; and only in rare instances I found that a supervisor would admit that he was intentionally assessing property below the true cash value. I didn't always agree with them when they said that they were endeavoring to assess it at the true cash value. I think that a majority of the supervisors honestly endeavored to assess the property at the true cash value. In my judgment and opinion there

are as many opinions as to the value of certain properties as  
119 there are men viewing it. On the board of tax commissioners there were five opinions as to the value of property in most instances. We generally arrived at the value of property by giving and taking, as they call it.

Lack of time was the reason the board did not cover more of the counties of the State prior to fixing the average rate in 1902. Attempted to arrive at the true cash value of property from examinations had and made by the field men employed in examining the transfers of property sold, by verifying the considerations and actually visiting some of the property.

The course pursued by field men with reference to valuing property was to go to either one or both parties to a transaction and ascertain from them the actual amount paid for a given property; they would also in addition to that view the property themselves, pass their own opinion upon it as to the value of it, making inquiries from well informed people in the neighborhood adjoining the prop-

erty, or in the vicinity of the property, and then taking at least one section, one piece in every section of a township and examining it carefully, and passing their own judgment upon it, asking the owner thereof as to what he thought the value was, and again inquiring of neighbors and well informed people as to what their idea of the value was, and by all of these methods attempting to arrive at the actual cash value of the property, always under the instruction of the commission to be conservative in their ideas as to the value. This was the character of the examination made in 1902 and in four months of 1901. The examination of 1901 was declared defective and altogether unreliable. The members of the board relied very largely upon the work of the field men in 1902.

And generally had no knowledge of the property up to the time of the meeting for the review, and at a review would pass upon the rolls of a great many wards or townships, and it was impossible to become familiar with specific items of property, so they proceeded by percentages and made horizontal raises except in a few rare instances.

120 In holding general reviews we had the field notes of our examiners with us, and a copy of the transfers from the register of deeds' office before us, and then we had a table prepared by our office force showing the total valuation of the county as shown by the returns made by the local assessing officers, and another column showing the amounts that it should be valued at in accordance with our examinations, and some other column showing the percentage lacking to bring it up to 100%, etc., then we would first meet with the supervisors as a body and talk to them collectively, and argue with them as to their duties, and pointing out to them their rights in getting the sworn statement of the individual taxpayers of their towns, and then meet with them individually, confidentially, away from the balance of the board, and then go over every individual item that we had, in some cases having 150 items to go over with each individual assessing officer, and in that sort of a way get them to agree with us as to the value and the assessment that their properties ought to stand there. Washtenaw county was not reviewed but has been examined by our men and was said to be very well assessed. I think as near up to cash value as may be without knowing more definitely, I would not wish to say that it had been deliberately and intentionally undervalued in 1902. Had examined Genesee county, except four townships and the city of Flint reports show it to be at about 85%.

In arriving at the average rate, State, county, municipal, school and township taxes only were considered.

No assessor ever said in his hearing that they were endeavoring in undervaluing to discriminate against the railroad corporations.

(This, under objection by Mr. Angell of irrelevant, incompetent and improper cross-examination.)

Q. Now from your experience, and in talking with the supervisors,

and in making valuations of the property of the State in the  
121 discharge of your duty as a member of the board, state  
whether or not in your opinion the undervaluations of prop-  
erty which were made by supervisors were made with an intention  
of discriminating against the Michigan Central Railroad Company  
or any of the corporations covered by act 173 of the session laws of  
1901.

A. I do not know, I am sure, what the supervisor or officer might  
have had in mind.

Q. Did you from any information which you gained arrive at the  
conclusion that there was anything more in the under-valuation  
than for the benefit of the locality where the assessments were made?

A. That was the reason if they admitted it at all, that was the  
only reason they gave, in order to get even with the other fellow  
adjoining them.

Q. So as to equalize their taxes?

A. Between towns, yes, sir.

WILLIAM T. DUST, recalled for further cross-examination, testified  
as follows:

I have no knowledge of any county in the State which was in  
1902 assessed as low as 30%. I don't think there was any assessed  
as low as 30% in 1902.

Q. What would be your judgment as to about the percentage at  
which the State was assessed in 1902, give your best estimate.

A. Well, I should think from 85 up—85 up to 95 or 96, or along  
in there.

That in making the report to the State board of equalization it  
was intended to give the board our best judgment at that time.

And later on in 1902 we lost sight of that report altogether  
122 and made an independent valuation upon more careful  
lines and closer investigation. Think report to the last board  
of equalization estimated the cash value of the property of the State  
at \$1,702,000,000, which was increased by \$13,000,000 in making the  
estimate for the purpose of first fixing the average rate in 1902, mak-  
ing \$1,715,000,000. The 13 million consisted, to a large extent, of  
personal property. There has been a larger percentage of increase  
in personal property than in real estate during the past two or three  
years. The increase in personal assessments commencing with  
1900, being: 1900, \$310,997,015; 1901, \$315,141,085; 1902, \$331,-  
433,531.

There was a considerable increase in the value of property of the  
State during the years 1901-2—intrinsic value, along with the pros-  
perous times we have had property has intrinsically increased in  
value. It would not necessarily follow that because a certain prop-  
erty, for instance a manufacturing plant, had been increased in 1903  
over what it was in 1902, that it had been under-assessed in 1902.  
The increase might be due to the prosperous condition of business,

which had increased the value of the plants, and this is especially true of franchises of corporations. There was a considerable increase in the value of street railway properties in 1902.

Being approximately about 10 millions.

There was invariably a difference between the members of the tax commission as to the value of property when we sat together, being three, or four, or five; the difference ranging as high as 15 per cent. If, in looking over the local assessors' valuations, those were found to be 5 per cent. less than the value which the tax commission fixed, we would frequently give the assessor the benefit of the doubt; that it was an honest difference of opinion and pass the assessment.

### 123 Redirect examination :

Has not had occasion to determine in his own mind whether Washtenaw at 100, or 90, or 80 per cent.

Q. In that connection yesterday you stated something of this kind: That the supervisors when asked to explain their low valuations said that they did it to keep even, or something of that kind, can you recall the question?

A. Yes sir.

Q. What did you mean by keeping even?

A. With the adjoining town. They were fearful if they assessed as the law directed that the adjoining town not assessed at the same ratio, would get the advantage of them when they came to equalizing between towns, the fall equalization in the county.

Q. Do I understand you to say that was the general and usual excuse that men gave when you took the question up with them?

A. It was by those who would admit it at all, that they were assessing at less than value.

The board fixed the gross total valuation of the State at \$1,715,000,000. The aggregate of the total valuations placed by the assessors was \$1,418,251,858, approximately 296 million less than the figures reached by our board. If the difference between the two large figures that have just been named would result within a fraction of about 82% for the assessed valuation by the local assessors, then it is true that taking the State at large, the average valuation reached by the assessors would be about 82% of what was fixed as the true valuation. In arriving at that 1,715,000,000 there was of course a controversy and a difference of opinion on the board at that time. Some were even higher than that and some were lower than that. The ten million dollars added to the so-called franchise value of corporate property was added in 1901 or 1902. That was one of the cases spoken of, when after a conference of views we

124 reached a joint conclusion; and a final determination necessarily stands as the action of the board.

The increased valuation was due to increase in business prosperity and to the fact that the franchise value was taken into consideration in arriving at the value which before that time had not been paid



much attention to. Some of it was new property, but with reference to existing properties was an increase in the appraised value, due to the condition described. And this figure passed into the 331 million dollar figure for the year 1902 previously read, it being for the year before 315 millions. Some of the 10 millions would be real estate and would not be represented in the 315 millions.

Q. Now in answer to a question of the attorney general this morning, I understood you to say that you thought the percentage of assessed to true valuation ran from 85 to 95 % at the present time. Do I understand you correctly ?

A. I include the present year in my answer. I honestly think that the average for 1902 would run higher than 82 %, though it would not go beyond 90 % in my opinion.

The board, acting as a board determined and so certified that as shown by those figures made, about 296 millions was the difference between the aggregate assessed and the true cash values of all the property. That was the conclusion.

Q. The point about it is this—I don't want to ask you to take a pencil and paper and figure out percentages at the present time—I understand that the percentage is 82 and some decimal between these figures we have talked about, and I simply desire to ask you, assuming that it is 82 decimal, was that the deliberate determination of your board, you and your associates acting as a board, did I understand you to say it was such ?

A. Yes sir, it was.

#### 125 Recross-examination:

Witness handed Exhibit F to the bill of complaint, and the report of the State tax commission for 1902 (Exhibit C) and requested to examine pages 374 and 375 and give figures recommended by the State board of tax commissioners to the State board of equalization in the year 1901, and also to give from the report of the commission for 1902 the reviewed assessment as made by the commission for certain named counties. This was given as follows:

	From Exhibit F.	From Exhibit C.
Bay.....	\$26,077,673	\$26,303,303
Saginaw.....	41,997,094	39,442,671
Jackson.....	37,838,738	34,666,749
St. Clair.....	34,691,206	32,002,861
Macomb.....	31,026,777	26,688,500
Kalamazoo.....	34,305,210	29,599,282
Kent.....	106,244,208	94,498,141
Washtenaw.....	36,143,162	34,794,531
Manistee.....	13,395,665	11,182,660
	<hr/> \$361,719,733	<hr/> \$329,178,698

That difference in those several counties was found by the board to exist as compared with the figures reported to the State board of equalization. The estimate to the State board of equalization overran the latter values, the values given for 1902 were the result of a more thorough, careful and reliable examination, and during the intervening time there had been the increase in values previously spoken of, due to the prosperous conditions of the country.

Witness' attention called to certain pages of Exhibit F to the bill of complaint and also Exhibit C, report 1902, and testified therefrom as follows:

	Personal property as reviewed by tax commissioners from Exhibit C, report 1902.	Assessments personal property, Exhibit F to bill.	Equalized by county boards.
Bay .....	\$5,636,973	\$5,159,508	Same.
Saginaw.....	11,182,741	10,791,500	"
Jackson .....	7,761,764	6,859,894	"
St. Clair.....	6,929,886	4,782,900	"
126 Macomb.....	5,958,125	5,068,335	Same.
Kalamazoo.....	8,607,687	6,280,618	"
Kent .....	26,855,090	21,629,589	"
Washtenaw.....	8,065,332	7,715,001	"
Manistee.....	4,891,250	5,709,233	"
Total .....	\$85,888,848	\$73,996,578	

Q. To sum this up, is it not a fact that in 1902 when the board of State tax commissioners had caused a more careful examination of the properties of the State to be made, not including the property covered by act No. 173 of the Laws of 1901, that you found that even with the natural increase in the values of property and the addition in bringing into being that new property during one of the most prosperous years in the history of the country, that the item of \$1,715,000,000 was thought too high even so far as the few counties which you had to inspect were concerned, by about 31 millions of dollars?

A. That is made apparent by this showing.

#### Redirect examination.

The figures in Exhibit F to the bill in column marked "Total valuations equalized" represent the values as equalized by the county officials. The personal properties were not before the State board of equalization.

Q. Your attention has been called by Mr. Blair to several counties, to the results, of comparative examinations in different years.

When your board determined to figure which you have spoken of several times, 1715 millions, that determination was reached, was it not, after all the field work and the conference work and the work of the supervisors, etc. for the year 1902, and made later in the year?

A. Yes sir.

127 Q. And in the light of all the experience which the board had had up to this time growing out of the examination and conferences and investigations of all kinds?

A. Yes sir.

#### Recross-examination :

Q. You have already given us the value upon Exhibit F, and from the tax commission report of the total real and personal — for the various counties which I have mentioned and making the deductions from the total which you have given, I find the following state of facts: That as recommended by your board to the State board of equalization in 1901, the real estate of Bay county was assessed at \$20,918,165; the real estate of Saginaw county was assessed at \$31,205,594; and the real estate of Jackson county was assessed at \$30,978,844; the real estate of St. Clair county was assessed at \$29,908,306; the real estate of Macomb county at \$25,958,492; of Kalamazoo county, \$28,024,492; of Kent, \$84,614,619; of Washtenaw, \$28,428,161; of Manistee, \$7,686,432; and pursuing the same course with reference to the deduction of the personal property from the total as reviewed by your commission in 1902, I find that the real estate of Bay was fixed by your board at \$20,666,330; of Saginaw \$28,259,930; of Jackson, \$26,904,985; of St. Clair, \$25,072,975; of Macomb, \$20,730,375; of Kalamazoo \$20,991,595; of Kent, \$67,643,051; of Washtenaw, \$26,729,199; of Manistee, \$6,291,410. And the total of real estate as recommended by your board to the State board of equalization in these very counties, amounted in 1901 to \$287,723,155, and as actually determined by your board on its review in 1902, the total of the real estate in these various counties amounted to \$243,289,850, which, according to my computation, is

84.6% of the amount reported to the State board of equalization.  
128 If that is the correct computation, then your board actually found that the real estate as estimated by you at its true cash value was only 84.6% of the value of the real estate as you have recommended its value to the State board of equalization, that would be correct wouldn't it?

A. Yes, that is correct if your figures are correct.

#### Redirect examination :

Q. In other words, the recommendations of 1901 you modified on further examinations in 1902?

A. Yes, sir.

Q. That is the long and short of that story?

A. Yes sir.

Q. After you made the modification and all other modifications which your experience showed you to be necessary, then in December 1902, you fixed upon this figure of \$1,715,000,000 as the true cash value?

A. Yes, sir.

JAMES C. McLAUGHLIN, on the part of the complainant, testified as follows:

Direct examination by Mr. BUTTERFIELD:

I reside at Muskegon, Mich. My age is 45. I am a member of the State board of tax commissioners, and *ex-officio* a member of the State board of assessors. I was appointed a member of the State board of tax commissioners in January, 1901, and when the act was passed creating the board of assessors, I became a member of that board. That was passed by the legislature of 1901. I assumed my duties about the 23rd of January, 1901, and from thence hitherto have given my attention and time to the work of these two boards.

129 I think the first work that I did of any consequence was in the line of visiting the counties, talking with the boards of supervisors as to their duty as assessing officers. Visited Menominee, Berrien, Saginaw, Bay, Ingham, and Kent in 1901. The purpose of my visit in 1901 was to have a general talk with the supervisors concerning the work that was upon them as assessing officers and upon us. Previous to our visits of 1901, I may say I had no information except the most general knowledge; I never had made any investigation of their assessment.

Mr. Blair adds to the objection here that fieldmen occupy no official position and that reports made by them are hearsay and incompetent.

We had a report known as Exhibit A which purported to give a comparative statement of considerations in conveyances as compared with the assessed valuation.

In those visits to the boards of supervisors we did not call attention of the boards of supervisors to the statements contained in Exhibit A, and made no allusion to it whatever. In connection with this, if we ever referred to it, I stated that we had repudiated it entirely and placed no dependence upon it and would base none of our work upon it.

Q. The information then which was in your possession when you visited these boards, was that the general property in the State subject to ad valorem taxes, was not assessed at its true cash value, wasn't it?

A. Reports of that kind had come to me, yes sir.

Q. And you went into the counties referred to upon the assumption that that was the fact, did you not?

A. To talk with them upon that subject and upon that way of doing business.

130 Q. And you went with the assumption to them and talked on the basis and upon the assumption that that was the fact, did you not?

A. In many cases, yes sir.

Q. Was there any exception in the counties that you have named?

A. Well, I don't know, I didn't have information enough to know how the assessing was being done.

Mr. BLAIR: I object to this method of examination, I don't think it is a proper examination in chief, it is practically a cross examination and arguing with the witness.

A. Well, I don't think I can say yes to that hardly.

Q. Then in what cases, please note the exceptions to that.

A. Well I can hardly say, we had reports that that kind of work was being done in some parts of the State, and we wanted to talk—

Q. Subdivision 9 of section 150 of act 154 of the laws of 1899 authorized the creation of your board and made it the duty of the board "to report to the legislature at the beginning of the regular sessions specifically true values of the properties of corporations paying specific taxes, and the rate of taxation actually paid upon such valuation and the true valuation of all other properties of the State and the rate of taxation the same are paying, to the end that the legislature shall have the information necessary to rearrange the rate or system of taxation of such properties so that all taxable properties of the State may be taxed uniformly." Do you remember of making use at all in your visits to the board of supervisors of the contents of subdivision 9 referred to—didn't you call their attention to the fact that it was one of the duties of the board to ascertain the true value of the property of the State and compare it to the assessed valuation. In 1901, prior to the first of June, these visits you have spoken of to these various counties and meeting with the boards?

131 A. We did talk to the supervisors, yes sir, upon those lines.

Q. Did you ascertain in those meetings or during those visits to the counties, or did you acquire any further information as to whether the property in those counties was actually assessed at its true cash value or not, either by conversations with the supervisors themselves or otherwise?

A. No sir.

Q. You acquired no additional information as to the fact whether property was assessed at its true cash value by those visits?

A. I wouldn't say that we did on visits of that kind.

Q. Didn't you ask the supervisors in a confidential way whether

they were assessing at the true cash value or at a percentage of the true cash value of the property?

A. At those general meetings?

Q. That is what I am speaking of, that you have referred to prior to the first of June.

A. Well, sometimes, yes sir.

Q. Sometimes you asked them what the fact was?

A. Yes, sir.

Q. And did they uniformly say that they were assessing at the full true cash value?

A. No.

Q. And in the case when they didn't say that, what did they say?

A. Well, one would say one thing and another another thing, they didn't all answer alike.

Q. Did any of them say that it had been their custom to assess the property in every district at some percentage of its true value less than 100%?

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant.

A. Some of them made these statements, yes sir.

Q. Then when they made that statement, didn't that afford you information to the effect that the law was not being complied with in those assessing districts?

A. Yes, sir.

Q. Then as a matter of fact, in cases where you did hear those statements you obtained some additional information in addition to what you had when you made the visit?

A. We had their statements, yes sir.

Q. You treated that as information, didn't you?

A. Treating that as true, we had additional information, yes sir.

Q. And you did treat it as true, did you not, at that time?

A. Well I usually accepted those statements as true.

Q. Now these statements were sufficiently general, weren't they, to induce the board to take definite measures to verify the information contained in Exhibit A being the list of considerations, lists of transfers.

A. I don't know, as you put that question, to verify them.

Q. Well I will put it that way, was that practically true?

A. We refused to accept it because those percentages were misleading.

Q. When you were appointed, you say, in 1901, the first duty you performed was to give an opinion as to the reliability of Exhibit A?

A. Yes sir.

Q. And you then gave the opinion that those percentages were unreliable?

A. Yes sir.

Q. Then you based that opinion upon your general knowledge of



the custom of putting considerations into deeds, not upon any information you had obtained as a member of the tax commission?

A. Yes sir.

Q. Now laying aside Exhibit A, is it a fact that the statements you have referred to coming from local assessors that they were assessing property in their districts respectively at some percentage of its true cash value less than 100 %, were sufficiently general to induce you and your board to make further investigation along the lines pursued in compiling Exhibit A?

A. We had some such statements from supervisors and it was our duty to ascertain whether others were doing—what work others were doing, not the work but what the supervisors of the State were doing, and we made the investigation to ascertain the facts.

Q. And you reached a conclusion, did you not, before you ordered that large expenditure of money, that the practice of assessing property at less than its true cash value was quite general in the State?

A. That there was more or less of it.

Q. That it was quite general?

A. That there was more or less of it, I couldn't say how much of it as compared with the whole.

Q. But of course that expression "more or less" really does not signify anything particularly as it seems to me; of course, there was more or less, but isn't it a fact that you personally reached the conclusion that after having made those visits prior to the first of June, 1901, and after having learned what the other assessors knew of that work, you personally reached the conclusion that the practice of assessing property at less than its true cash value and at some percentage of true value, less than 100 %, was quite general through the State?

MR. BLAIR: I object to that question as incompetent, immaterial irrelevant and leading and not proper examination in chief.

A. The information I had there you say was based on the statements made by the supervisors largely?

Q. No, read the question. (Last question read.)

A. I became satisfied there was a great deal of it going on, yes sir.

Q. Was that also the opinion of your associates on the board as expressed officially in the meetings of the board?

134 MR. BLAIR: We object to that.

A. Yes sir.

Q. What steps were taken by the board to ascertain what the fact was and whether your conclusion was well founded?

A. Well, a great deal of our time was taken up by getting the information for the State board of equalization, but most of our investigations of that year were made to enable us to advise the State board of equalization.

Q. That was all completed prior to what time, your final submission to the State board?

A. About the middle of August.

Q. And your final recommendation to the State board of equalization was in August, 1901.

A. August 1901.

Q. Please state fully what that recommendation to the board of equalization was based upon.

A. Well, principally it was this: We took the record of the transfers of real estate which we had in our office, transfers that had been recorded during the year preceding, the year ending June 30, 1899—

Q. Now just a moment there, let me interrupt you. Do you refer now to the transfers included in Exhibit A—did you have any additional information as to the transfers beyond what is contained in Exhibit A?

A. In Wayne and Kent we have.

Q. But not in any other counties?

A. In other counties we had no additional information.

Q. Then you had to make use of the conveyances as stated in Exhibit A?

A. The conveyances that we took and used were taken from the same reports that these conveyances were taken from.

Q. In Exhibit A?

A. Just which ones we took and how we took them I don't remember now, but the basis of the two was the same.

Q. Now then proceed with the answer to the other question.

A. Field men were engaged, a few at first to go out into the State, they had these transfers, these transcripts, and it was their duty to try and prove the considerations and to ascertain if the true considerations were stated in the deeds, if not, to find what the true considerations were and to compare those considerations with the assessments of the same property and to view the property and get a judgment of their own as to the value of the property that was sold; later on more men were engaged; as time went on we found they were not making the progress we had expected and before the work was finished we had quite a force of men, I don't know just how many, probably 30.

Q. Give us your recollection about that.

A. It would be only a conjecture now, 25 or 30, but that large number was employed only towards the last as we became hurried. These men made reports to us and they were tabulated, showing the percentages of the different townships.

Q. Now can you remember the name of the first man that was employed to do this field work?

A. Two men were employed then at the same time, Samuel M. Bibbins and James L. Gilbert, both of Washtenaw county.

There were several employed immediately after that but I think the next two in order were Mr. Bolt and Mr. Horton, whom I recommended from Muskegon county. Bibbins, Bolt and Gifford are still

in the employ of the commission, and do the same general line of work. I think Mr. Bibbins and Mr. Bolt are among our best men.

Q. Now they were employed among the very first to start this field work, and you have said that they were directed to take with them the reports of the registers of deeds as to the considerations named in conveyances recorded for the year ending June 30, 1899, as embodied in Exhibit A?

136 A. There were certain changes and eliminations, certain ones stricken out.

Q. After certain eliminations were made?

A. Yes sir.

Q. No additional reports were called for from the registers of deeds?

A. Except in the city of Detroit and the county of Kent, it seems to me there were others.

Q. You have said then that they were instructed to verify the statement contained in a deed as to the consideration. Will you please state how they were directed to verify those considerations?

So far as time would permit, the field men were requested to talk with the supervisors or some other well informed person in the township, sometimes seeing and talking with one or the other of the parties to the transaction, and to make a personal view of the property as far as possible in the limited time.

The examinations now made occupy more time and are much more thorough, than those made in 1901.

The view of the property, one piece in each section, was not for the purpose of ascertaining whether the consideration was proper. The idea of it being to try and prove the consideration of the sale, to see one piece on each section of land where there had not been a sale.

Q. Is there any substantial difference in the instruction given to those field examiners today or in the year 1903, from that which was given to them in 1901?

A. We give them the same only more of it.

Q. So that your experience has shown, and the experience of the commission for 1901 and 1902 and 1903 has shown that the instructions given in 1901 were correct so far as they went at least, and your experience has taught you to approve that method of ascertaining the value of the property, is that so?

A. It is the best plan we have discovered; I cannot say  
137 that I approve it all.

Q. It is the best plan you have discovered?

A. Yes sir, I don't know of any other way to do it.

Q. How much of the State of Michigan was covered by men who were directed as you have stated in the year 1901, prior to the first of June or prior to the report to the State board of equalization?

A. Nearly all of the State.

Subsequent to the adjournment of the State board of equalization in 1901 and prior to the second Monday in October we held some

special reviews. In Manistee, Ottawa, Chippewa, Saginaw, and Bay counties very few fieldmen retained after August 1901. A few who were retained worked principally in the field.

Continued doing field work as previous to August and preparation for reviews during 1902 prior to June, which work of commission was similar to that of 1901, visiting counties during the regular meetings of the boards in January, and the same general field work was going on. Prior to June of that year was in Kent, Kalamazoo, Muskegon, Ottawa, St. Clair, Macomb, Saginaw and Bay.

Some of the meetings held for general talks. At some of these meetings we had more or less extended talks with the supervisor about his work, as shown by the field report. This was before the assessments were completed, and while he was engaged in his assessing work.

In each county visited in 1902 we had two examinations—the work on which the report to the board of equalization was based, and the additional field work subsequently. The last examination and the one which was relied on, is not that embodied in Exhibit F and has never been tabulated, but the information was conveyed to the supervisors in 1902 and is on file in the office.

138 In the year 1902 we had certain general reviews in certain localities and also certain special reviews; we also had field work done in still other localities. General reviews were held in St. Clair county in 1902, the entire county.

My recollection is that there was a general review in the counties of Bay, Kalamazoo, and Jackson; the city of Saginaw wasn't included in the reviews of Saginaw county. There was a review of a portion of Charlevoix county, and the city of Mackinaw Island. There was a general review in Macomb county.

St. Clair has been entirely reviewed, but whether a part of it was done in one year and a part in another I don't know. I never have done anything myself in St. Clair. There was an entire re-assessment of Port Huron in 1902 and a new assessment roll made entirely, the townships of Clay, Columbus, Cottrellville, and Kimball, that is only a portion. The counties in which there was a general review in 1902 covering the entire county are Macomb, Bay, Kalamazoo and Jackson. There were special reviews held in St. Clair, Saginaw, Charlevoix, Mackinaw and some other counties.

With the exception of the city of Grand Rapids in Kent county, and Mackinac Island in Mackinac county, the entire counties referred to had been examined but the reviews were special as to parts only of the counties.

We proceeded differently in the different reviews. Sometimes special reviews related only to individuals and their personal assessments.

In 1902 the counties which we undertook to bring to cash value were the four named—Macomb, Bay, Kalamazoo and Jackson. That must be qualified by saying that in some cases the parts were taken which we accepted as correct where we had general reviews

in taking a portion of the county. Such was the case in Kent and Saginaw. The part we acted upon we put up to what we  
139 believed to be true cash value.

And was satisfied to leave the portions not included in the review as they were. We didn't think they required our attention. The plan was to publish a notice of the review, fixing the time and place of the review, and if it was special, it simply related to property of certain named individuals.

(Copy of notice of review marked Exhibit G.)

(Under objection, by Mr. Blair, as incompetent, immaterial and irrelevant.)

In 1902 the review in Kent was general outside of the city of Grand Rapids. What was done in the city was special.

There was an attempt to ascertain the percentage of the assessed to true value in the portion that was not reviewed. Made an examination of the entire city, but made no change in valuations as a whole.

We had other information in the city of Grand Rapids besides field notes, which inclined us to disregard the field notes so far as to decide that it was not necessary to hold a review on the real estate assessments in the city of Grand Rapids.

(Under objection by Mr. Blair, as immaterial and irrelevant.)

We had numerous conferences with the assessing officers in Grand Rapids and gathered a good deal of information as to the value of property there, and the manner in which the supervisors or assessors were doing their work. The assessments in Grand Rapids as a whole, had increased in three years—or from 1899 to 1901—approximately from 28 millions of dollars to 71 millions of dollars.

And we thought that the aggregate of the city was not far out of the way. We attributed a great deal of the increase to the work of the tax commission and the assessors; the increase in value of Grand  
140 Rapids from one time to another had something to do with it.

There were some figures submitted by field men to the effect that property was still assessed at a percentage of its value less than 100, but for reasons stated to the commission we saw fit to omit a general review of Grand Rapids.

Exhibits H, I, J, K, and L purport to be tabulated statements of the result of the work of field examiners in the year 1902 in Shiawassee, Montcalm, Clinton, Calhoun and Menominee counties.

I do not remember whether field work performed in entire of those counties in year 1902.

Have definite recollection of examinations in counties Shiawassee, Montcalm, Clinton, Calhoun and Menominee.

Exhibit H (Montcalm county) handed to witness and question asked, "Do you find in that report a statement of the percentage of the assessed to true value of the property for the year 1902 in that county?"

(Objected to by Mr. Blair, as immaterial and irrelevant and incompetent to make examination with reference to these papers which have been marked as exhibits for the reason that they are not authenticated in any way.)

A. The paper contains figures which purport to be percentage of assessed to cash value in the townships of Montcalm county, being result of work of field examiner in 1902, and (under objection, by Mr. Blair, of immaterial), the examination in Montcalm was one of the kind that we consider the best we have done.

Q. I then ask you to state the percentages of assessed to true valuation or to cash value in the different townships and cities in Montcalm county as shown by the report which you hold in your hand, Exhibit H, and in connection therewith state the percentage of assessed to cash value, as shown in the report submitted by your board to the State board of equalization in the year 1901 appearing on page 347 of Exhibit F attached to the bill of complaint.

141 (Objected to, by Mr. Blair, as incompetent, immaterial and irrelevant and hearsay.)

Percentages read as follows:

	Exhibit F, report b'd equalization.	Exhibit H, work fieldmen.
	%	%
Belvidere.....	37.9	54
Bushnell.....	71.2	68.1
Bloomer.....	70.3	66.5
Cato.....	47.7	50.2
Crystal.....	62.5	61.5
Day.....	71.9	67.9
Douglas.....	49.2	60.5
Eureka.....	65.6	77.
Evergreen.....	82.1	74.7
Fairplains.....	56.2	69.8
Ferris.....	52.6	61.1
Home.....	59.4	70.6
Maple Valley.....	44.9	49.3
Montcalm.....	65.1	66.3
Pierson.....	53.4	72.1
Pine.....	54.1	53.2
Reynolds.....	37.4	42.9
Richland.....	58.1	61.6
Sidney.....	44.	54.3
Winfield.....	52.3	48.3
Greenville city.....	68.1	69.7
City of Stanton.....	80.3	81.

Saw report after it came from field examiners. Exhibit H, a part of records of office.

A paper like it prepared under direction of commission.



Witness handed Exhibit I, similar tabulation for Shiawassee county. Exhibit H offered in evidence.

(Objection, by Mr. Blair, as incompetent, immaterial and irrelevant and based on hearsay.)

"Mr. BUTTERFIELD: This purports to be a tabulated statement prepared in the office of the tax commission from the reports of the field examiners for the county of Montcalm prepared under the direction of the commission according to his testimony."

(Objected to by Mr. Blair, as incompetent, immaterial and irrelevant and based on hearsay.)

Witness requested to read percentages from Exhibit I, first giving name of township, ward or city, then percentage as shown in report of 1901, then percentage in Exhibit I.

142 (Same objections, by Mr. Blair, as to previous report and tabulation, and that no basis for introduction of tabulation by any proof of original field notes, if they are competent.)

Percentages read from eight-column, Exhibit I:

	Exhibit F to bill, report 1901.	Exhibit I.
	%	%
Antrim .....	63.4	62.43
Bennington.....	78.3	67.5
Burns.....	71.8	71.86
Caledonia .....	65.2	72.40
Fairfield .....	77.3	66.16
Hazelton .....	94.2	91.49
Middlebury.....	78.2	89.35
New Haven.....	92.5	88.8
Owosso.....	72.3	79.34
Perry.....	60.6	60.65
Rush .....	60.9	63.83
Sciota .....	76.1	75.16
Shiawassee .....	71.4	73.42
Venice .....	79.5	76.24
Vernon .....	64.4	62.51
Woodhull.....	76.5	71.31
Owosso city.....	93.3	74.
Corunna city.....	87.1	71.75

Exhibit I offered in evidence.

(Same objections, by Mr. Blair, as to last exhibit.)

Exhibit J, same tabulation for Calhoun county, shown to witness with request for same comparison.

(Same objections, by Mr. Blair.)

Percentages read as follows :

	Exhibit F to bill, report 1901.	Exhibit J.
	%	%
Athens.....	75.1	82.1
Albion (whole city).....	72.4	85.3
Burlington.....	69.4	76.8
Battle Creek.....	84.1	81.2
Battle Creek city.....	70.2	71.9
Bedford.....	95.4	79.2
Clarence.....	64.2	66.3
Clarendon.....	74.9	73.2
Convis.....	86.1	81.6
Eckford.....	75.5	89.6
Enmett.....	76.9	84.1
Fredonia.....	73.2	75.3
Homer.....	59	76.4
Lee.....	59.2	66.8
Le Roy.....	64.9	77.6
Marengo.....	88.	86.6
143 Marshall.....	84.6	80.4
Newton.....	72.6	71.9
Pennfield.....	86	87.8
Sheridan.....	76.3	85.1
Tekonsha.....	70.9	69.5

Albion city by wards: 80.6, 81, 85.8, 85.6

Marshall city, by wards, 66.1, 87.1, 79.4, 71.3

Exhibit J offered in evidence

(Subject to same objection, by Mr. Blair.)

Exhibit K handed witness, being table for Clinton county and same comparison requested.

(Same objection, by Mr. Blair.)

Percentages read :

	Exhibit F to bill, report 1901.	Exhibit K.
	%	%
Bath.....	82.5	75.5
Bengal.....	69.5	73.9
Bingham.....	94.	80.3
Dallas.....	72.6	77.8
De Witt.....	83.	69.5
Eagle.....	78.8	88.
Essex.....	75.7	76.1
Greenbush.....	75.1	69.2
Lebanon.....	68.7	82.
Olive.....	76.8	66.6

Ovid .....	79.	83.5
Riley .....	82.3	75.8
Victor.....	76.1	70.
Watertown .....	78.	72.8
Westphalia .....	78.6	71.8

Exhibit K offered in evidence.

(Subject to same objection, by Mr. Blair.)

Exhibit L handed to witness, being similar table for Menominee county, same comparison asked for.

(Same objections, by Mr. Blair.)

Percentages read :

	Exhibit F to bill, report 1901.	Exhibit L.
	%	%
Cedarville .....	68.8	46.3
Holmes .....	50.9	52.6
Ingallston .....	57.8	55.9
Menominee .....	68.	69.4
Mellen .....	77.6	60.3
Meyer .....	79.6	88.9
Nadeau .....	47.6	42.9
Stephenson .....	76.5	45.
Spalding .....	47.8	48.8
Menominee city .....	55.2	94.8

144 Exhibit L offered in evidence.

(Same objections made, by Mr. Blair, as to Exhibits H, I, J and K.)

I don't know of any more tabulated statements being made of work done in 1902.

Under the act creating the commission we were required to make an annual report, and the report was made at the end of 1902, covering the work of 1901 and 1902. That report is the document known as Exhibit C in this testimony.

Q. Before having made that report, however, state whether or not your commission, the board of State tax commissioners, ascertained and determined the cash value of all the property in the State subject to ad valorem taxes for State, county, township, school and municipal purposes, and other than the property taxed under act 173 of the laws of 1901, you ascertained the true cash value of that property as a commission.

MR. BLAIR: I object to that as incompetent and as determined by the supreme court of the State, immaterial and irrelevant.

A. We ascertained it twice.

Q. I don't understand what you mean by that "twice."

A. For the purpose of finding the average rate we determined

one amount, 1715 million, and in making the average rate again, or in making the certificate for the average rate again, we took 1458 million.

Q. You didn't undertake to say when you used 1468 millions that that was the true cash value of all the property in the State which you have described?

A. No, sir.

Q. So then, as a matter of fact, you didn't undertake to determine the true cash value of the general property in the State but once?

A. Our own figures only once.

145 Q. And what amount was that?

A. 1715 millions of dollars in round numbers.

Q. And is it a fact that you yourself made the motion at the meeting of the board which resulted in that determination?

Mr. BLAIR: I object to that as being immaterial and irrelevant.

A. Yes, sir.

Q. That, I take it, was your deliberate judgment and final conclusion as to the true value, the cash value of the general properties of the State above referred to, was it?

A. I can hardly say now how I arrived at that and why I made the motion.

Q. I say you expressed it as your deliberate judgment as to the true cash value of those properties, at that time, did you not?

Mr. BLAIR: I object to that as immaterial.

A. I can hardly answer that question yes or no.

Q. I call your attention to the certificate which has been shown by the testimony to have been a true copy of the first certificate that was attached to the assessment roll of the railroad property represented on pages 69 and 70 of Exhibit C, and ask you if you signed a certificate of which that is a copy, the original certificate being Exhibit D in evidence?

A. I believe this to be a true copy of the certificate that we made as attached to our roll and I did sign the original certificate.

Q. And it met your full approval, didn't it?

Mr. BLAIR: I object to that as immaterial.

A. It did not.

Q. State whether or not it was an expression of your conclusion as a member of the State board of tax commissioners upon the subject therein referred to.

146 Mr. BLAIR: I object to that as immaterial, the paper shows for itself and he has no right to cross examine his own witness upon that subject.

A. It was the conclusion of the board as a whole.

Q. State whether or not you reported to the public and to the legislature and to the governor in the report covering the period of

1901 and 1902, being Exhibit C, that "it would be impossible to enumerate the questions raised and the matters discussed at those meetings, but with them all we emphasized the importance of listing all property subject to taxation and assessment of all at its cash value, endeavoring to point out that equal taxation and uniformity of assessment throughout the State can be accomplished in no other way; that while the old plan of assessing property at a percentage of its value prevails, and each supervisor uses his own judgment of the percentage to be applied in his district, there is danger of as many different percentages as supervisors in a county and the property of no two counties will be assessed by the same standard of value."

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant.

Q. (Continuing:) Did you so report?

A. Yes, sir.

Q. Did you also report in that report as follows: "From the time we were able to begin the collection of data until the board of equalization concluded its labors, we were almost continuously employed. The plan used in collecting information as to the value of the taxable property of the several counties of the State and the amount and kind of work done in this respect is set forth at some length in our communication to the board of equalization as is also the opinion of this commission of the law governing the said board of equalization in its work. We believe this amount is still many millions below the value of real estate and personal property of the State." Did you so report?

147 Mr. BLAIR: I object to that as incompetent and irrelevant.

A. I did.

Q. Did you also report on page 47 of that report near the bottom that: "It follows, if it be determined that all the counties are below cash value (a condition well known to exist) that such percentage or amount must be added as will bring each to this cash valuation basis, and equalization certainly will be attained." Did you so report?

Mr. BLAIR: That is objected to for the same reason.

A. That appears in the report, yes. I didn't prepare that part of it.

Q. You subscribed to it, did you not?

A. Yes sir.

Q. I take it then your subscribing to it was a—

A. On approval of it as a whole.

Mr. BLAIR: I object to that as immaterial.

Q. Some litigation arose then relative to the determination of the average rate by your board?

A. Yes, sir.

Q. Did you sign and make oath to the answer to the orders to show cause in the case of The Board of Education of the City of Detroit, relator, against The State Board of Assessors, respondents, in the supreme court of the State of Michigan?

A. I did.

Q. Did you in that answer use this language: "That as this respondent believes and charges the truth to be, the undervaluation of the property of the State subject to ad valorem taxes for State, county, township, school and municipal purposes throughout the State was not the result of accident, inadvertence or mistakes in judgment, but that such undervaluation of such property was in a large number of municipalities of the State intentional and general, and that this practice of undervaluation has been in vogue  
148 in this State for a great many years, and that if the court desires to examine the date upon which the foregoing statements are based, it will be furnished?"

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant.

A. That statement appears in the answer, I believe, which I subscribed and swore to.

Q. State whether or not the data which you offered then and there to furnish to the court was in part the Exhibits H, I, J, K and L, these tables.

A. Similar ones. I don't know that those had been made at that time.

Q. But you expected in that data if it was called for, to rely upon the work of the field examiners, did you not?

A. We expected to submit the data we had offered.

Q. And the data that you refer to was data derived by the field examiners and subsequently worked over and tabulated by your commission?

A. That was a part of it.

Q. That statement then, in paragraph 11, which I have just read to you from the answer in the mandamus case was in all respects true, wasn't it?

Mr. BLAIR: I object to that as immaterial and incompetent.

(Counsel presents paper to witness.)

A. That expresses the opinion of a portion of the tax commission. It is stronger than I would make it, according to my opinion of the situation.

Q. If you were to make it today?

A. If I were to make it at any time.

Q. I will ask you the question again: Whether paragraph 11 in that answer that you subscribed and swore to was at that time in all respects true?

A. Substantially true, yes, sir.



Q. In what respects was it untrue, if any?

A. Only as it might give a wrong impression by the strong language used as to the number of municipalities in the State and the proportion of them in which the under-valuation of property was by intention.

Q. You intended, however, did you not, to give a correct impression of the fact when you subscribed and swore to that document?

A. Yes, this was the combined judgment of the members of our board.

Q. The signature of each was your individual act?

A. We all signed the answer.

Q. And you all swore to it, didn't you?

A. We all swore to it, I believe.

Q. Then it was your intention, wasn't it, in signing and swearing to that answer, to represent the fact without any misrepresentation whatever?

Mr. BLAIR: I object to that. That is not in my view, proper examination in chief.

A. Why, I think I answered that question; I could subscribe to that then and the same now, but my individual judgment is that that is true in a qualified sense, but at the time I didn't think it was just exactly true, but it was the judgment of a majority of the board.

Q. Do you mean to say that you signed or swore to that document with a mental reservation which qualified its meaning in any respect?

Mr. BLAIR: I object to that as improper examination.

A. Yes, I mean that I had to do lots of things on the board that was not altogether my judgment.

A. I am not inquiring about other things, just at present; I am inquiring just on this document, and I want to be certain that we have no misunderstanding about it. Do I understand you now to say that you had a mental reservation when you signed and swore to that answer which would qualify the statement contained therein?

A. I simply say that language is stronger than I would employ, because I think it gives, or it is apt to give, a wrong impression.

Q. Did you have any idea when you signed and swore to the document that it would give any wrong impression, or does your opinion that it may possibly give a wrong impression grow out of what has happened since the document was compiled?

A. We were talking about the affidavit at the time it was made and not now.

Q. At that time did you think that the document which you signed and swore to was apt to give a wrong impression?

Mr. BLAIR: I object to that.

A. There was considerable discussion at the time that affidavit was made as to that particular language, and it did not meet the approval of all of us, but it finally went in.

(Last question read.)

Mr. BLAIR: I object to that under the rulings of the supreme court, this witness being his own witness, he is not at liberty to cross examine him as he is doing at the present time.

A. I would like to have that answer stand as the answer to the question, that there was considerable discussion upon that very paragraph and that it did not meet the approval of all of us as it was drafted, but that we finally accepted it and all signed it.

Q. Then I understand you to say that after considerable discussion on the board with reference to this language of that particular paragraph which I have read, you did sign and swear to it?

A. I did sign and swear to it, yes sir.

Q. Then do you mean to say that it was in any respect a misrepresentation of what you believed to be the facts?

A. It didn't meet my approval entirely.

151 Q. And you have stated, as I understand you, the qualification that you would make, namely, that you think it might give an erroneous impression as to the relative number of assessment districts in the State in which the undervaluation had been intentional, is that correct?

A. I said that, yes.

Q. Did you appear as counsel for the respondent in the supreme court in that litigation?

A. No, sir.

Q. Did your name appear as counsel for the respondent?

A. I think it did.

Q. Did you yourself sign the return as attorney for the respondent?

A. I think so.

Q. And did you authorize your name to be used as attorney for the respondent on the brief?

A. Yes, in the making of the brief.

Q. Did you authorize your name to appear as attorney for the respondent on the brief?

Mr. BLAIR: I object to that as immaterial.

A. I don't remember about the brief.

Q. But you did appear, or your name appeared, and was signed by yourself as attorney for the respondent on the answer filed?

A. Yes, sir.

Q. Did you attempt in the presentation of that case to the supreme court to point out the qualification that you thought ought to be made on paragraph 11, in that answer?

Mr. BLAIR: I object to that as immaterial and irrelevant.

A. No, I didn't take any part in the presentation of the case.

Q. And although the answer you say, in some respects, did not express your views exactly, and you would have qualified paragraph 11 to the extent of limiting the statement as to the number that had intentionally undervalued the property, yet you didn't put 152 yourself on record in the brief as having had that view.

Mr. BLAIR: I object to that as improper examination of the witness and immaterial.

A. I never approved that method of finding the average rate and I didn't fall over myself to make it stand up in the supreme court.

Q. Do you mean to say that you didn't approve that method of determining the average rate?

A. Yes, sir.

Q. And yet you appeared as counsel for the respondent on a brief in which you contended that that was the proper method?

A. Yes, sir. My name appears in the answer and in the brief.

Q. Was it placed there without your authority?

A. No, sir.

Q. I will read from page 13 of the brief in the supreme court in the case above referred to, signed by yourself.

Mr. BLAIR: I object to reading from the paragraph as irrelevant, immaterial and incompetent.

(Continuing:) "It may also be said that it is common knowledge, and no one pretends otherwise, that the properties of the State are systematically, habitually, assessed less than value, various reasons being assigned therefor for which both assessor and taxpayer are to blame." Did you know that that statement was contained in the brief over your signature?

A. I don't recall when I first saw the brief. Mr. Freeman prepared it.

Q. But did you see it before it was filed?

A. I don't remember when I first saw the brief.

Q. You don't remember that you saw it at all before it was filed?

A. I can't recall now.

Q. Did you file any supplemental brief in which you expressed your—

A. I think the supplemental brief does not have my name.

153 Q. Having learned—

A. I think I never saw the supplemental brief before it was filed, I am not clear about that, I think it hasn't my name.

Q. Having learned at any time before the case was finally disposed of that the brief to which you have referred had been filed wherein your name appears, did you file any supplemental brief to express to the supreme court your desire to qualify your sworn answer?

Mr. BLAIR: This is all taken subject to my objection.

A. I never presented anything to the supreme court on this matter at all except in connection with Mr. Freeman, as you have stated here.

Q. I take it from what you have now said that at the time you signed and swore to that answer, and up to the time of the final submission of the case to the supreme court, it had not occurred to you that there was any necessity of qualifying what you had said in any return, had it?

A. I didn't care to qualify it, we had decided on it as a board and I was willing to stand by it.

Q. You are willing to stand by it now are you not?

A. I tell you the circumstances under which it was made and I will let it go at that.

Q. You have no desire now to withdraw from it?

A. I never liked that; I never agreed with the other members—some of the other members of the board, as to the method of finding the average rate, I never believed it could stand up and don't agree with them now, but I did join with them in making that affidavit—that is to the average rate, I joined with them in the defense of that suit to make it stand up and I joined with Mr. Freeman in the brief, but I never have thought—and I never have expected it was necessary to explain my individual opinion or action, but  
154 I give it now; I never approved of it and I never thought it was right.

Q. But you did believe that the 1715 millions was a fair cash valuation of the general property of the State which was to be considered in computing the average rate?

A. I don't remember what my individual opinion was at that time; we agreed upon that; and as you have referred to it, I made the motion of 1715 millions, whether it was to keep a large or smaller amount from being adopted, whether it seemed the one would be that I thought it was the best, I don't remember.

Q. You finally joined in the action?

A. We finally joined in the action of 1715 millions.

Cross-examination by Mr. TOWNSEND:

The duty of the field men in 1901 was to make as good examinations as possible within the time, to gather information for us to make report to the State board of equalization of the value of real estate. He was to do more in 1902 than in 1901, take more time to verify considerations and more time in examining the property and learning conditions and ascertaining values.

Knew nothing of what he was doing except as obtained from his report. After reports came to the office they were tabulated by the employees, under direction of the secretary and chief clerk, but verified none of the work so as to determine whether it had been done correctly. Relied on reports of field men;

And in making recommendations to the State board of equalization we thought field men's reports reasonably reliable; thought the work had been fairly well done and that the men were good men. The work done in 1902 differed, results were different in many cases than the result obtained in 1901. In the report to the  
 155 State board of equalization, we followed the report of the field men in nearly all cases. There were some counties where the properties were not examined by field men and we submitted other data to the State board. Notably, Houghton, and some of the mining counties, and in Kent county and Detroit we relied upon correspondence for some of our information. Did not pay attention to sending out men who were familiar with the locality to which they were going, but sent the men that we thought best fitted for the kind of work.

In all cases sent non-residents of the locality.

In Saginaw county the review was of the townships alone, because our previous examination of the city of Saginaw convinced us that it was near enough right, and we were satisfied that the part of the county not examined was at cash value in the main. In the city of Grand Rapids a great deal had been done before, an immense raise had been made in Grand Rapids. And we thought enough had been done there, that we would devote ourselves to the townships, and that would cover the county as a whole sufficiently.

In Charlevoix county there was a general review of a part of the townships and of the city of Charlevoix, the rest of it we didn't have time to cover, we took only the worst of it.

There was a general review in the city of Mackinac Island. We were not prepared for the rest of the county.

There was a general review in the city of Holland that affected all the property, we hadn't made an examination of the rest of the county. There were different conditions in different counties. We sent field men who lived in the city into the country districts, and those who lived in the country into cities.

Referring to Exhibit J, the headings of the columns read :

- (1.) Name of assessment district ;
- (2.) Number of pieces examined ;
- (3.) Percentage of real estate examined ;
- 156 (4.) Percentage of assessed to actual value, 1902 ;
- (5.) Actual value of real estate, 1902 ;
- (6.) Percentage of raise required in 1903.

The number 34, under column "Number of pieces," opposite Albion, indicates number of pieces examined by examiner, but does not show number of pieces in Albion, all told, and he does not know the number. The percentage of real estate examined is 15.4 of the entire property. Don't know whether that percentage is of the number of pieces or of the entire value of the property. In the next column 85.3 is the percentage which the assessed valuation of the pieces bears to the actual value, in the opinion of the examiner ; that is that the 34 pieces were valued at 85.3 as determined by the

examiner. To get at the actual value the field man forms his opinion of the values of the property, sees what it is assessed at, compares the two, and gets the percentage, determining the full value of each piece he has examined. If he has examined 34 pieces, in averaging them they are assessed 85.3 of what he thinks they are worth.

The 17.2 % in the last column is the percentage necessary to bring the assessed value to \$870,000. I think that this sheet was used when the roll of 1903 was inspected and that the 6.1 % in pencil on the right, indicates that he has come within 6.1 % of doing what he was requested to do, namely, raise 17.2 %.

In addition to using a memorandum of sales, he examines, for instance, in the township of Albion, 30 pieces of property, finds out what he thinks the value is by inquiring of neighbors or looking at the assessment roll or from the county treasurer, puts the evidence all together and finds out what he thinks the value of the property is. Don't know whether the 34 pieces examined were all the pieces sold or not.

The calculation is done here in the office and the percentage computed here in almost every case.

157 Do not, from this examination alone, assume that all of the property in the township is 17.2% below and raise it horizontally 17.2% and do not rely on field men altogether, but sometimes have a meeting with the supervisors, showing them the field work, and asking them why they should not assess on the basis of our examinations, and our knowledge, as gained by the field work, as qualified by what supervisors say.

If an individual supervisor can give no reason why those changes should not be made, or if he admits their correctness, we then ask him to come to those figures, but if he can satisfy us that our examinations are wrong, and the extent to which they are wrong, we modify our opinion as to what is required of him. Quite often he changes our opinion to some extent.

The 1702 millions reported to State board of equalization contains figures for some counties that are not our recommendation; aside from that we took the field notes and worked on the percentage plan alone to arrive at the values of the several counties; that is, if a man reported 34 pieces in one township and he found those 34 pieces should properly be raised 17.2 per cent. to put them to cash value, we would apply the same per cent. to all the property in that district and make a horizontal raise.

After the report to the State board we made special and general examinations as heretofore detailed, and found that the values arrived at on these examinations differed considerably in some cases from the computations made in reaching the 1702 millions. The percentage plan was employed in 1902 the same as in 1901. The difference being the extent of the examination, but the finding of the per cent. and manner of using it was practically the same.



Where the percentage is different, we accepted the more careful examination and the percentage of the later year.

If the field man had gone into the township of Albion and examined 15 pieces of land and determined the percentage, and  
158 then went in again and examined 30 pieces of land and determined the percentage in the same way, the rate would have been different in each case.

It might have been different if 15 pieces had been examined in one case and 16 in another. We took representative pieces at random in 1901, and we did not examine as many pieces as we did in 1902, and those examinations in many cases result in different percentages. Don't think it was the rule that the more pieces examined the more favorable it was to the assessor. The percentages vary both ways; which way most I cannot tell. The result of those townships investigated more carefully in 1902, in those counties that had been reported in 1901, showed a marked increase favorable to the assessor.

In arriving at the value of property to be used as a divisor in determining the average rate, my recollection is that we took our report to the State board of equalization as a basis, and that total was 1702 million, in which we were represented as recommending 180 millions for Houghton—which we did not recommend—and in one or two other counties figures were put in to make up that 1702 millions which were not our figures, but were above our opinion of values. We thought Houghton county was too high, because in valuing it we had considered the value of the mining stock and there had been a great decline in mining stocks, which showed that Houghton county was not worth as much as supposed to be, and should not be placed at a figure indicated by market quotations. We allowed something for Houghton and other counties of that kind; then compared in a general way the values of counties reported to the State board of equalization and the value of those counties as we had determined them by our later and fuller examinations, and found that upon our fuller and later examinations in 1902 in counties where we made general reviews our value did not come up to our figures of those counties in 1901.

159 There was a marked difference in some and not much in others. We made a guess at what the rest of the counties would show by the same kind of work, with the result that we reduced materially that 1702 millions of dollars. Then we made a guess as to the amount of personal property in the State that was not assessed, and the two together were somewhere around 1715 millions. Can't tell how much personal property was put in. We have worked for a couple of years digging out personal property and had some information of the most general kind, as to the way the personal property was being assessed but had nothing definite to go by. I objected to the whole plan of doing that, my objection was based on the idea that it was a guess.

And that our action would be a guess and indefinite; that our action was controlled by the statute and that we could not use our

judgment, but we were held to the assessed value. When we were trying to find out that amount, we were guessing too much and hadn't data enough.

Q. I want to ask you if that result of 1715 millions of dollars was the result of a compromise between the members of the board as to the value that should be placed upon property outside of what was covered by act No. 173?

A. Yes, sir. We had all kinds of views as to what that total figure should be; we were above it and below it.

Q. Were any members of your board claiming at that time that if this sum could be added in fixing that rate that there would be no objection presented on the part of the railroad companies to paying their taxes and that probably the last objection would be removed?

A. Well, the question of the effect upon this matter was spoken of, that if this allowance was made it would take from the railroad their only weapon that they had to fight their assessments; that was expressed as an opinion of the effect of that proceeding on our part.

160 Q. Did you know how that 296 millions of dollars that has been spoken of once by Mr. Butterfield, I don't remember in which connection that 297 millions was mentioned, but I think it is mentioned in the bill, how was that obtained, where did that come from?

A. Is that the difference between the 1715 millions and the assessment of the State?

Q. I don't know what it is.

A. I have explained how that was. It is obtained by subtracting the assessment of the State from the amount we found the State to be. We didn't ascertain and we didn't fix the amount which should be added; we fixed the total amount and the subtraction produces that amount.

Q. Now I want to ask you if that amount that was determined by the board was a guess, compromise, rather than an amount that was determined by anybody as an exact amount of the value of the property outside of act No. 173?

A. I hardly know what a guess compromise is. It was guessing and compromising, both.

Q. You were all guessing at it. No man had the facts there upon which to base his judgment, but said "I make that so much from these facts." Was there any man that had a computation made there of things that he knew actually existed?

A. We had to depend on our judgment of what was going on in the State, the way property was being assessed.

Q. Each one had to do that?

A. Each one had his own way of doing, I think each one had his own amount and finally we agreed upon this amount, but the general plan that I speak of was employed to a considerable extent, starting from the report to the State board of equalization and striking off a large amount for Houghton county and other mining

counties, striking out where our examinations of 1902 did not come up to the examination of 1901, and in a general way after 161 they accepted our values as found in 1901.

If the field men had examined one fewer or one more piece, the result might have been different, but not necessarily so, as the pieces examined might have been at exactly the same percentage. It would be very apt to change the percentage up or down.

Do not know why the percentage for Menominee city reported to State board of equalization 1901, was 55.2 %, while in Exhibit L it was 94.8 %, there might be a difference in the supervisors' assessment or there might be a difference in the judgment of the field men.

There is a difference in the judgment of field men, and if two men were sent through the same district, think would be very apt to differ, and think might differ widely.

The answer in the Detroit school board case, the first draft, was from the attorney general's office, but it was changed in some particulars in our office, principally by Mr. Freeman, if I recollect. We discussed several features of that answer all together before we signed the answer and there was some discussion along the old lines as to whether we had proceeded upon the proper lines or whether we should have adopted the plan that the supreme court afterwards told us we should adopt, and the question arose of what we ought to do in this suit that was up, and finally we decided we would have to make the best hustle we could to make our action stand, whether it was right or wrong. I never thought our action was right, but I was willing to give it the best show that we could make and the best showing we could in the supreme court.

When general reviews were held, the information was gotten—first, from the registers' office, then from the field men, next by a conference with the supervisor, sometimes before he had made his assessment and sometimes after. Sometimes the report of 162 the field men was modified by our talk with the supervisors and from things that we had learned and we would not follow the advice of the field men upon that case.

Q. Now in talking with the supervisors over the State on these and other occasions, I suppose you found men sometimes, supervisors who admitted they were assessing under valuation?

A. I have met such.

Q. What proportion were those men who admitted they were, of the supervisors with whom you talked upon the subject, large or small?

A. A small proportion of the whole.

Q. What proportion of the whole supervisors of the State?

A. Still smaller of course, because we talked with a very small number of the entire assessing body of the State.

Q. Did you in any place where you have held your examinations, discover any systematic or concerted action on the part of the

supervisors, to beat the railroad companies in reducing their assessments?

A. No.

Q. Did they express the idea that they wanted to keep the assessments down so that the railroads should have more of the burden of the taxes?

A. I don't recall ever hearing that said by a supervisor.

Q. Did you in all your experience ever find two supervisors who were concerting or acting in concert upon some line to accomplish the same purpose jointly?

A. I found very often one supervisor watching another to see what kind of assessing his neighbor was doing.

Q. He was afraid his neighbor would get the advantage of him?

A. Yes, sir.

Q. But they were not working together to accomplish this purpose?

A. Well, I don't know that they were.

163

It is usual to take the minutes of transfers from the books of the register in the register of deeds' office, this was given to the field men who tried to verify the considerations and in different ways ascertain and form an opinion of the value of the property, they go to one or the other of the parties to the sale, where they can to ascertain if the true consideration is stated in the deed, where they can't do that, or they are not reliable, they talk with supervisors or other well informed persons of the community to verify the consideration in that way, then by all means at hand gain an opinion of the value of a piece of property sold, independent of the consideration, and then at least one piece, as a rule, is examined in each section of land in a township, especially if a sale has not taken place on that section, and if, in the opinion of the examiner, he has learned enough about the piece by the piece sold, he does not examine another piece. By enquiring of parties he tries to learn conditions and sizing up the situation he forms an opinion upon the values of land or many pieces of land in the township.

It frequently happens that a man from Detroit or Grand Rapids goes into Calhoun or some other county, makes up his judgment as to the value of that property and reports it to the board of tax commissioners, and they rely upon it. Frequently the supervisor who lives in that country has a very different judgment from that of the field man, and that judgment modifies our opinions sometimes of the report of the examiner. The board of tax commissioners determines the value of the property with all the information that is brought to us to form an opinion, and we rarely see the property.

I always see every supervisor or every supervisor sees the work of the examiner and expresses an opinion upon it. We have no way of verifying the work of the supervisor except by the report of the field men and we take his statement and the report of the

164

field man and from this make our assessment.

Attention of witness called to field man's report for Menom-

inee county ; where the percentage of value was 55.2 % as reported to the State board of equalization in 1901, the report of the field man for 1902 shows percentage at 94.8 and indicates that he has examined 2.1 % of the property of the entire city. It depends somewhat upon the man and the pieces as to whether a man could examine 2.1 % of the property in Menominee city and determine the value of the city. The field man is usually a stranger.

Two and one-tenth per cent. would amount up in a large roll to quite a large number of pieces. It would be two in a hundred, and if there were several thousand it would be a large number of pieces. The examination of \$61,000 out of three million dollars worth of property, as appears to have been examined was a very small part of the property, and an examination of that kind would be quite unreliable. The examination of three pieces in any township, as was done in Meyer township, Menominee county, would not give the examiner reliable information.

165 A. F. FREEMAN, on the part of complainant, testified as follows:

Direct examination by Mr. BUTTERFIELD:

I reside in Manchester, Washtenaw county, Michigan ; am 45 years of age. I am a member of the board of State tax commissioners of this State, and have been since July, 1899, the time the commission was organized. I am a lawyer by profession.

The commission in 1899 consisted of Milo D. Campbell, of Coldwater ; Robert Oakman, of Detroit, and myself.

Q. What work did the commission occupy itself with in 1899 with reference to the ascertainment of the percentage of assessed to true cash value of the general properties of the State subject to ad valorem taxation, if any ?

A. Well, before it was undertaken to arrive at percentages, the commission, or the members of it, traveled the State over quite extensively, in the fall of the year in the upper peninsula and then meeting with as many supervisors as we were able to while they were in session in October, 1899, and then following immediately with this work of which I think you speak, the collection of certain data to learn how the properties of the State were being sold, and then to learn how those same properties were being assessed, and with that in view the members of the commission prepared blanks suitable for obtaining the transfers of all the real estate or property that occurred between the year ending June 30, 1899, for the year previous to that, whereby the registers of deeds took off the transfers, that appeared from their records within that period, and there was a blank upon that blank whereby they could swear that they had collected the data that we asked for, and then that blank was to be turned over to the county treasurer for him to take from the assessment rolls which were in his office the assessment of those

identical properties which the registers of deeds had placed upon that blank; that was the first real step that was taken by the commission.

166 Q. What was done with those blanks after they were filled out?

A. They were returned to the office gradually, and the commission from those blanks eliminated such that appeared to be foreclosures or sheriff's sales, or such as would be regarded as forced sales under the law, because the definition of cash value eliminates that kind of a sale, and the percentages were figured at the office by the assistants under the direction of the secretary and by Mr. Gullifer, who we regarded at that time as the chief clerk, although there was no such office at that time, he was a well informed man and he was by common consent regarded as chief clerk of the office.

Q. Was that material subsequently tabulated or printed?

A. Yes, it was.

Q. I hand you Exhibit A and ask you if that is the printed report of that information?

A. Well, I think it was one of them, yes. \* \* \*

In the year 1899, as soon as these sales were compiled, we proceeded to put them into statistical form of Exhibit A. One of those was sent to each assessing officer.

Mr. BLAIR: I object to this line of testimony on the ground that it is immaterial and irrelevant as well as largely incompetent and hearsay.

In the fall of 1899 Mr. Campbell and I had been out and visited as many supervisors as we were able to during the period they were in session; Mr. Oakman did not visit as many as we did; I covered all the ground I could within the time, and so did Mr. Campbell; as I remember it, I covered 12 or 15 counties, and he the same, and Mr. Oakman covered some, I don't remember just how many during the assessment period, going out and addressing them and talking with them; one of the duties of the office was to visit each county in the State once each year for the purposes of learning conditions existing, and I think the members of the com-

167 mission—I know I did—gave a lot of time to that class of work, going all over the State; we didn't succeed, however, in fulfilling that duty, we could not do it in a year and visit every county in the State, and make a visit that is of any importance I mean, to put any time in.

Those visits continued during the year 1900. I was at it almost continually, myself and Mr. Campbell. In the fall of 1899 we called on them when they were in session, met them as a body and addressed them for half an hour sometimes, and sometimes longer. There wasn't as much of that work in 1900 in the calling them together; in the subsequent years after that I was around among them a great deal, and so was Mr. Campbell.



Q. In the early part of 1900 your visits were largely to the individual supervisors?

A. In the fall of that year we were among them.

Q. I am speaking now before the assessment rolls were completed for the year 1900.

A. Yes, sir.

Q. Will you state how many, according to your best recollection of the supervisors of the State, you talked with personally between the time the commission was organized and the month of June, 1900?

A. That would be very difficult for me.

Q. I suppose you kept no record?

A. None whatever.

Q. Give your best estimate of the number that you talked with.

A. Well, in the fall of 1899, as I say, I covered between 12 and 15 counties personally, just as fast as I could get from one county to another while they were in session, and they are usually in session different periods ranging from ten days to two weeks and sometimes longer at that time, and then, as I say, I was travelling the State over and talking with assessing officers; I believe, however, in the fall of 1899 I talked with all the assessing officers in the upper peninsula; we took especially one or two counties like Luce, 168 Schoolcraft and Aiger, and some of the assessing officers of the others, although I was in each of the other counties and talked to many of the supervisors.

Q. Were all the counties that you visited, from 12 to 15, in the upper peninsula?

A. No, sir; those 12 or 15 were in the lower peninsula.

Q. State about how many assessing officers there are in each county on an average.

A. That varies; you might say, there is a county of twenty townships, that is quite a common county, and of course you will find a city possibly with three assessing officers in and sometimes one, and sometimes you will find cities like Adrian and Jackson which are under the old supervisor system with 7 or 8 supervisors.

Q. As many supervisors as wards?

A. Yes, sir; so that you could not tell.

Q. In those meetings with the supervisors in the fall of 1899 and in the spring of 1900, was their attention called to the material which had been compiled by the commission and published in Exhibit A?

A. Well, I think everybody in the State knew of them, because they were having some trouble—

Q. Was the attention of the supervisors called to it specifically at those meetings?

A. Well, it was not in 1899. We had not collected it yet, we were collecting it during the winter and spring time before the assessment of 1900, then their attention was called to it.

Exhibit A was prepared just before the assessment period of 1900 along about that time.

Q. What information, if any, did you get when you visited those boards of supervisors in 1899, as to the question whether the property in their various districts was being assessed at its true cash value?

169 A. Well, the first information that came to me was on the tour that the commission took of the upper peninsula, which was in September, as I recall it now, of 1899, when we went directly to the supervisor, got his roll and had a stenographer with us and collected a lot of data, he would take it down to preserve it for our use, and we had personal interviews with the supervisors and found the amount of the assessment of the different properties, and I refer now specially to the assessments of the mining property in the upper peninsula, and then talked with them upon the assessment of their other properties.

Q. Did they give you information as to whether their property in their districts was being assessed at true cash value or what they considered some percentage of its cash value, less than 100%?

Mr. BLAIR: I object to that as immaterial.

A. Yes, sir; I talked that matter everywhere; that was the purpose of our visit, to learn those things.

Q. What did they say?

A. Well, they admitted in a large number of instances they were not assessing the properties at value. I remember distinctly of that statement of all the boards of supervisors whom we had in session; at Houghton county in their expressions they all admitted the fact that after they had found the value as they regarded it of the mines, they then assessed them at sixty per cent; and we asked them if they treated other property upon a like basis, and they said they did, and they had no special favor to offer to the one class of property, and other supervisors would say like this.

Mr. BLAIR: I object to this testimony which he is giving as to the statements made by these supervisors in the fall of 1899 as being hearsay, incompetent and immaterial.

(Continuing:) "No, we are not assessing at value; how can we if the others do not?" Well, the reply would be, "You should assess at value, and then if some are not they should be brought to  
170 that standard"—that is the only reply, although no per cents were expressed as I know of.

Q. What was the fact as to the counties in the lower peninsula that you visited, with reference to the statements of the supervisors as to whether they were assessing property at what they believed to be its true value or not—I am speaking of the meetings you have referred to in the year 1899 when you visited 12 or 15 counties.

Mr. BLAIR: I object to it as incompetent, irrelevant and immaterial.

A. You mean at the time the supervisors were in session?

Q. Yes, sir.

A. Well, at those meetings the new law was talked with them and the importance of obeying it, and the only way to have equal taxation would be to have all the properties assessed at one standard, and that standard to be the cash value standard, it was a long talk that we gave them along those lines, I do not care to rehearse my talks to them to you. When we would get through with those kind of talks with them we had interviews, and a lot of questions would be asked by them, how to assess this and how to assess that kind of property, and we had a general heart to heart talk over the conditions, and it was very frequent upon my part to ask them if they were assessing their properties at its full cash value, and I have heard many of them say that they were not and there wasn't anybody else doing it, but I say also in addition that no per cents were ever expressed to me in the fall of 1899. I cannot recall of them.

Q. State whether or not the admission on the part of the supervisors and assessing officers in the year 1899 that they were not assessing at true cash value was general or rare.

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant.

A. I have heard it so many times.

Q. Was it a common thing or an uncommon thing—did a majority of them say it or was it only a small minority?

171 Mr. BLAIR: I object to that. It is a mere conclusion. He should state the individuals who did make such statements and then the court can draw its own conclusions.

A. It is hard for me to say as to majorities, I heard that expressed frequently. As to whether it was a majority or not I could not say. I did go into some counties where they appeared to be very fair in assessing, and some would claim that they were assessing at value.

Q. Did you communicate the information to the other members of the commission?

A. Yes sir, and the other members would talk about the result of their interviews that they had in the State.

Q. What was the report that was made to the board from the other commissioners, Messrs. Campbell and Oakman—did their experience correspond with yours?

A. Yes sir. \* \* \*

Mr. BLAIR: I object to it as incompetent, immaterial, irrelevant, leading and an improper examination.

A. (Continuing:) It was similar.

One of the first features of the work between June and October, 1900, was an assessment attempted at Grand Rapids. This related mainly to personal property. Out of this grew the test of the constitutionality of the law, the assessing officers declining to give us

the rolls. The decision was rendered before the second of October, 1900. The outcome of that decision was to the effect that we had a right to the rolls, and then we placed our values upon the properties we had reviewed, and we began to have other hearings in the State and we proceeded to have them until the October time or thereabouts, when our time closed for holding reviews.

Sometimes one, sometimes two and sometimes three members attended a review, there was no set practice. There were no general reviews in 1900, except possibly in Mackinac.

172 The special reviews related to property of individuals named in notice, and were not reviews of all the property in a given assessment district.

There was no case in 1900 with the possible exception of Mackinaw where the board of tax commissioners changed the assessment roll of an entire assessing district. For the first two months of 1901 the commission practically did nothing.

There was a change in the law, or an amendment to the law, rather, making five members of this commission. That was passed at the session of the legislature of 1901, whereby Mr. Sayre and Mr. Pope of the upper peninsula were named and confirmed. After the adjournment of the legislature Mr. Pope declined to act, as I understood it, and then Manville Jenks, of Ishpeming was appointed after the adjournment of the legislature.

The work proceeded after the first of March by Mr. McLaughlin, Mr. Oakman and myself. Mr. Oakman continued to occupy the office until some time in May, as I remember it, until the question between him and Mr. Dust was settled in the supreme court, as to whether Mr. Oakman had been confirmed. It was held, as I remember it, that Mr. Oakman was not confirmed; then Mr. Dust became an active member. Mr. McLaughlin had been appointed in the spring of 1901. He and I with Mr. Oakman consulting, began to block out the work immediately after the first of March, first as to our duties with the assessing officers previous to the assessment time, we began to collect the data respecting all of the mortgages of the State for instance, which was a great job, and send them out, all of the mortgages that were assessable according to records.

We discovered what mortgages were on record in the State of Michigan that we found in a given county, and if the mortgage was held by a resident of another county, we sent the information to the place of his residence. The first work of the field men begun after the first of June. Mr. McLaughlin and I took an active part,

173 what little we could do, during the month of March, in collecting the data for the use of the assessing officers.

Then as soon as April opened up and the spring elections had taken place, Mr. McLaughlin and I went out all over this State, visiting as many counties as we could during the assessment period, meeting as many supervisors as we could, getting them together in a body and addressing them and having the kind of a talk that I have spoken of that occurred in the fall of 1899.

Q. During those meetings of the kind you have described in 1901, state whether the supervisors whom you visited stated to you whether they were assessing property in their respective districts at its true cash value or at something less.

Mr. BLAIR: We object to that the same as before.

A. Some did and some did not.

Q. Was it common or uncommon for a statement of that kind to be made?

A. Well it was common for the statement to be made, but I cannot tell to what extent. It was a frequent affair, that is all.

Mr. BLAIR: I also object to the leading character of the questions.

Mr. McLaughlin and I and Mr. Oakman took up the consideration of the approaching State board of equalization meeting, to occur in August, 1901, and discussed our duty as advisers of that board, and began to pick field men to obtain such information as existed. This was before the first of June, 1901.

The volume of men was between 50 and 55. We began with a few and increased as we could find the men. Some had different duties than others, but in the main they were to take the sales out of the previous work, represented by Exhibit A and go out and verify the considerations named, and where there were not sufficient sales, to take what we call pickups, so that they would have  
174 a sufficient number to base a judgment upon.

The results were reported to us from time to time for our use in reporting to the State board of equalization. Did not quite cover the whole State, a few counties they were directed not to have anything to do with. In Houghton and Gogebic they were instructed not to have anything to do with mines. Keweenaw, Ontonagon and Roscommon were not examined. Marquette only in a general way, exclusive of mines.

The result of this labor was tabulated and submitted to the State board of equalization.

Does not understand Exhibit F as some of the other members have explained it. My understanding is that this is the return of the supervisors of their conditions, and it must be that the State board of equalization placed in there the percentages which were arrived at and in the sheets we sent up to them, which would be the second column. That represents the tax commissioners' percentages of assessed to true value, providing it is printed correctly, if we leave out the counties just enumerated.

Q. I show you Exhibit F attached to the bill of complaint in this case and ask you if that is a copy, or I ask you if that portion of it appearing on pages 208 and 209 and following is a report of that work.

A. Well, I don't quite understand that as some of the other members have explained it, I may be wrong about it and they may be right about it; my understanding of that is, that this is the return

of the supervisors of the State of their condition, and it must be that the State board of equalization placed in there the percentages that were arrived at, and in the sheets we sent up to them, which would be the second column over here.

Q. Then the second column entitled "Tax commission percentages" represents what the tax commission had found to be the percentage of assessed to true cash value in the various townships referred to?

A. Providing it is printed correctly, and provided we leave out those counties I have spoken of, of Houghton and so forth. We never reported the valuation of any such thing as that.

Q. Assuming that there has been no typographical errors those percentages were submitted by your board to the State board of equalization.

A. I believe them to be true.

Q. Those percentages purport to be the percentage of assessed cash value in each of the townships referred to with the exceptions you have named?

A. Yes sir.

Q. And those percentages as ascertained by your commission were based upon the work of those 55 men as you have described it, am I right?

A. Yes sir, on the reports that they would make to us largely. Now, I only exclude out of that the city of Detroit, there was a little bit different work done there—and the city of Grand Rapids—by the commission, although we did send to the city of Grand Rapids and Detroit a number of assessing officers of the State whom we had great confidence in to learn conditions and report to us.

Mr. BUTTERFIELD: I offer in evidence Exhibit F attached to the bill of complaint.

Mr. BLAIR: I object to that as immaterial, incompetent and irrelevant.

I am in doubt whether Exhibit F is the report of the board of supervisors to the State board of equalization with the second column that we were speaking of added, or whether we reported that. There is a certificate to it by the board of supervisors, which makes me think that it was a table sent by them and our column put in. I am right about it and the other members of the board are mistaken. Those percentages are the report of the tax commission.

The column entitled "Percentages" contains the percentages which were determined and submitted by the tax commission to the State board of equalization with the exceptions I named a few minutes ago, provided it is printed correctly.

Mr. BUTTERFIELD: We offer in evidence Exhibit F for the purpose of showing the percentages which the witness has testified to.

Mr. BLAIR: We object to it because it is not the original report



itself which should be accessible, and it is otherwise incompetent, immaterial and irrelevant.

Mr. BUTTERFIELD: I also renew the offer of Exhibit A.

Mr. BLAIR: I object to that as incompetent, irrelevant and immaterial.

(Examination of this witness suspended for the present.)

177 F. O. GULLIFER, secretary State board of tax commissioners and assessors, sworn on behalf of complainant testified as follows:

Direct examination by Mr. BUTTERFIELD:

(Witness handed book "Report to State board of equalization" marked Exhibit M, says:) This book contains copy of report made to State board of equalization in 1901 by State board of tax commissioners. Does not know whether percentages in book in column headed "Per cent. assessed to actual value" are same as percentages in column entitled "Tax commission percentage" in Exhibit F to bill of complaint.

(Objection by Mr. Blair as immaterial and incompetent.)

Cross-examination by Mr. BLAIR:

The percentages were figured by clerks in the office. I verified computations largely myself. Think we got the percentages from the reports made by field men who made the examinations. The field men were instructed to report according to same method of ascertainment and reports were the same.

The field men figured the reports themselves in very few cases, and where they did, they were re-figured in the office. There were some cases where there were large plants included in the reports of the men, and I struck them out in arriving at the result.

I got authority from members of the commission to exercise judgment as to what should be included and what eliminated. There were very few reports of sales under \$500, and I do not think they were included in making up the computation. There might be a very few cases where there were small sales in.

If we had a considerable number of transfers in one county, and a small number in another, that did not affect or make any  
178 difference in the method of computation, and might not affect the valuation of the county. We had a general plan for doing the work, which took into consideration that the accuracy of the figures increased with the greater number of valuations of property, and decreased with the lesser, but if there were 300 transfers in one, and 100 in another, no distinction would be made. We would fix a value on one as high as on the other, if the percentages were the same. Whether 300 transfers in one county would produce more correct results than 100 in another, would depend upon the entire value of the county and its size, meaning whether the 100

represented a larger proportion of the value, if they represented approximately proportionate values, I do not see where it made much difference. We would be entirely accurate if we made a re-assessment of every piece of property in the county, and whenever you get less than that total number, the figures are less likely to be accurate.

(Recalled.)

(Witness handed Exhibit M and states:) The words and figures written on each page in pen and ink are memoranda to show what the different counties were equalized at by the board of equalization in 1901, and also what the same county was assessed at in 1902, by the assessing officers.

(Mr. Blair objects to assessments of 1903 going in as evidence.)

(Witness evidently handed Exhibit F to the bill:) The difference between the two reports is that in the published statement (Exhibit F) they put down the number of acres in a county, then the assessed value of the real estate and personal property separate, and we have simply (Exhibit M) put down the assessed valuation for real estate and the value of the personal property as equalized. The original report to the State board did not have the same columns as Exhibit

F; the last column of Exhibit F is not a part of our report. 179 There is in Exhibit F a column corresponding to every column in the original report to the State board of equalization, but put in in a different way.

I presume Exhibit F was made up from reports we gave the board of equalization. Exhibit M was compiled in our office under my supervision.

I don't know that they were prepared the same as Exhibits H, I, J, K and L, as there were two or three different ways of getting up these reports.

(Witness shown a paper and says:) That is the original compilation of the report for Calhoun county. (Paper then marked as Exhibit N.) These two reports are not the same, in compiling them we first compile the reports of the property that has been sold, then compile a report of the pickups. We put the two together and make one general report, which includes pickups, and property sold, and that makes the difference between these different sheets. The figures to the right on Exhibit A is the percentage that must be added to the assessed value to bring it up to what we consider cash value.

(Recalled.)

Direct examination by Mr. ANGELL:

(Witness shown Exhibit C.) (Mr. TOWNSEND: We make the usual objection to Exhibit C.) That report was made up from copy sent to the printer, but is the original report. The manuscript from which this was made up was not sent as an original document to

the governor, but was treated as printer's copy. Exhibit C is one of the whole edition of original documents.

It was printed by the State printer. The report itself is an original document, the statistical tables set up in the latter part of the book are copies of tables in the office.

Mr. ANGELL: I now offer Exhibit C in evidence to save any question.

(Mr. TOWNSEND: We object to it.)

180 Cross-examination by Mr. TOWNSEND:

This report was made from statistics, and articles by the different commissioners and articles by employees of the commission.

The statistics and articles are preserved among the records I think. I don't call the printer's copy the original report. The commissioners did not sign the report in print, they signed the original, I mean to say that this printed copy (Exhibit C) is an original. There are 4000 of them—not copies, but facsimiles.

The Exhibit C was not signed by the board. It was all printed and nothing written in. The board did not see the statistical tables, just as they went to the State printer, but had seen the tables and approved putting them in.

This book was made up from the manuscript reports, statistics, etc. on file in the office.

Redirect examination:

I think that about 79 million dollars has been added by the State board of tax commissioners to the appraised value of the State during the current year.

Mr. TOWNSEND: I object to that.

The total of the figures have not yet come before us.

(Mr. TOWNSEND: I also object to that as incompetent and immaterial, being at a subsequent period to the year 1902.)

Our reports show that the assessed value of the real estate as fixed this year exceeds that of last year by \$31,720,254, that is the total increase in real estate. The increase in personal property is \$20,147,002, so there was \$51,000,000 added by the assessing officers and \$71,000,000 added by the State board, making about 130 millions.

Recross-examination:

181 The figures given came from the different assessing officers of the State. I didn't compile nor take them off myself.

Direct:

Witness' attention called to table No. 10 appearing in Exhibit C. That table contains all the items that went into the dividend and

divisor in computation of the last average rate, and all of the items were made use of in the dividend and divisor except the last percentage column.

Cross-examination by Mr. TOWNSEND :

Any drain tax spread at large which was reported to us was included, but no others were.

I was secretary of the tax commission for two years and 5 months. I have been with the members of the tax commission when they made reviews, both in 1901 and in 1902, and am familiar with the method of obtaining values. Understand the method which the tax commission has used in getting values of property in the various assessing districts. In my opinion it comes as near to obtaining the actual conditions as can be done without a complete examination of all the assessments of property.

(Objected to by Mr. Angell as incompetent and irrelevant.)

The absolute value of the property in an assessment district can not be determined by examination of any percentage less than the whole, but I think that the men going through the assessment districts and working under the instructions of the commission could come close to the percentage of assessed to actual value. They might come further from or nearer to the actual facts by examining more. No man or number of men can go into a township where there are varied industries and arrive at the actual value without examining all the property.

182 The field men have been instructed to get the percentage under ordinary conditions, and where they find an assessment entirely out of the ordinary, it was not taken into consideration in making the average. I never attended a general review conducted as they conducted general reviews this year. The only ones I ever attended were at Mackinac Island and St. Ignace, where they examined every piece of property in the two cities.

As the reports of the field men came in they were turned over to the clerks in the other department to be footed, and tabulated.

(Under objection by Mr. Angell as not the best evidence.)

The field reports show that the properties are not equally assessed. They may find one piece of property assessed at 80%, another at 60%, another 50%, and from this they arrive at a percentage of the whole. There is no way to tell from the method employed how much property is assessed at 80% or how much at 30%.

Redirect examination :

If the local assessor has attempted to treat all of the people in his assessment district alike, and assess all property at the same percentage, and in his judgment has done so, a horizontal raise would leave them treated alike in the judgment of the local assessor.

The field men and local assessors differ in their judgment as to value.

For the first two years, I was with the tax commission I was traveling nearly all the time looking up individual assessments of large properties.

I think I have a comprehensive knowledge in a general way of the habits and practices of assessing officers of Michigan since 1900.

183 (Under objection by Mr. Townsend of incompetent and hearsay) I should say that the general properties of the State were considerably under-assessed, the personal property perhaps to a greater extent than the real estate, and that that is a matter of common knowledge.

Recross-examination :

Speaking from general knowledge as to what I heard about the railroad property, I would say that it was under-assessed also, but I didn't make any examination or computation.

I examined property in Saginaw, Grand Rapids and Houghton, Marquette and Gogebic counties. Most of these counties were raised and the properties I saw put to cash basis prior to fixing the average rate. I consider the railroad properties were put to a cash basis also before that time, and all of the large properties that I investigated.

Direct examination by Mr. BUTTERFIELD :

Am able to state how much has been added to the assessed valuation of the general properties of the State in 1903, over 1902.

Mr. BLAIR : We object to that as immaterial and object to the character of the proof. If proven at all it should be proven by the original assessment roll in which the change actually took place.)

I find that the figures which I previously gave as to the difference were wrong, the assessed valuation of the State this year, as reported to us by the assessing officers, is \$119,698,045 greater than last year.

(Mr. BLAIR : We make the same objection to all this as immaterial, irrelevant and incompetent, for the reasons stated, and it relates to a period after the period under inquiry in this case.

I have here a table showing the assessed valuation of each county for the years 1902 and 1903.

184 It shows how much added by the local assessors and how much by tax commission. (Witness reads from the table as follows:)

County.	Valuation ass'd and reviewed, 1902.	Valuation ass'd and reviewed, 1903.	Increase by tax com.	De- crease by tax com.
Alcona .....	\$1,003,870	\$943,544	*	*
Alger .....	3,091,278	3,295,976		
Allegan .....	19,734,264	20,098,182		
Alpena .....	5,328,859	4,933,625		
Antrim .....	5,024,072	5,249,559		
Arenac .....	1,845,077	1,788,126		
Baraga .....	2,592,080	2,626,014		
Barry .....	11,029,205	16,264,005	\$5,046,115	
Bay .....	26,303,303	25,411,077		
Benzie .....	3,000,827	3,059,264		
Berrien .....	24,221,187	24,753,434		\$51,500
Branch .....	16,783,085	17,186,009		
Calhoun .....	32,088,179	39,278,669	2,161,735	
Cass .....	12,934,628	17,657,260	4,497,097	
Charlevoix .....	4,605,429	5,161,283	291,308	
Cheboygan .....	3,067,897	5,249,986	918,537	
Chippewa .....	13,050,967	14,200,025		
Clare .....	1,602,452	1,652,096		
Clinton .....	16,801,613	21,266,915	2,560,050	
Crawford .....	1,202,928	1,363,348		
Delta .....	7,376,508	9,670,679	1,247,022	
Dickinson .....	9,842,807	9,932,127		
Eaton .....	19,296,970	19,487,038		
Emmet .....	7,922,831	8,325,925		
Genesee .....	26,897,571	27,313,513		
Gladwin .....	1,825,587	1,911,542		
Gogebic .....	9,670,373	9,907,510		
Grand Traverse .....	8,025,767	8,404,646		
Gratiot .....	12,793,474	13,187,655		
Hilldale .....	17,883,838	18,074,211		
Houghton .....	103,716,341	93,661,655		
Huron .....	11,304,095	11,771,538		
Ingham .....	23,544,283	23,670,802		
Ionia .....	19,024,115	21,652,450	1,847,620	
Iosco .....	1,664,666	1,641,453		
Iron .....	4,307,955	4,152,077		
Isabella .....	6,121,216	6,291,569		
Jackson .....	34,666,739	34,230,717	1,764,968	
Kalamazoo .....	29,599,282	30,329,089	418,330	
Kalkaska .....	2,886,790	2,942,342		
Kent .....	94,498,141	95,514,408		
Keweenaw .....	4,967,588	4,904,130		
Lake .....	1,188,575	1,243,785		
Lapeer .....	13,247,548	16,429,613	2,845,235	
Leelanaw .....	2,121,476	2,139,415		
Lenawee .....	29,169,725	39,399,341	10,049,637	
Livingston .....	14,223,880	16,065,660	1,828,500	
Luce .....	1,833,419	2,001,522		
Mackinac .....	2,575,982	2,787,171	68,800	
Macomb .....	26,688,500	26,749,775	101,010	
Manistee .....	11,182,660	10,917,737		36,100
Marquette .....	25,982,635	25,986,589		
Mason .....	6,440,601	6,547,568		
Mecosta .....	3,880,585	3,995,036		
Menominee .....	9,305,744	10,439,984	727,390	

\* Included in assessed valuation for 1903.



County.	Valuation ass'd and reviewed, 1902.	Valuation ass'd and reviewed, 1903.	Increase by tax com.	De- crease by tax com.
Midland .....	\$3,959,490	\$4,122,689		
Missaukee .....	2,142,401	2,048,080		
Monroe .....	17,076,015	17,238,618		
Montcalm .....	8,520,797	12,524,309	\$3,261,305	
Montmorency .....	954,840	999,716		
Muskegon .....	13,029,794	13,329,454		
Newaygo .....	5,279,099	5,415,546		
Oakland .....	32,902,383	37,122,019	405,495	
Oceana .....	5,089,232	5,214,415		
Ogemaw .....	1,379,553	1,846,598		
Ontonagon .....	3,968,519	4,483,194		
Osceola .....	4,297,260	4,300,113		
Oscoda .....	599,357	746,861		
Otsego .....	2,491,501	2,548,350		
Ottawa .....	20,192,315	21,298,279		
Presque Isle .....	2,530,575	2,755,915		
Roscommon .....	646,027	579,655		
Saginaw .....	39,442,671	40,048,159		
Sanilac .....	11,053,973	11,415,834		
Schoolcraft .....	3,247,097	2,978,064		
Shiawassee .....	17,340,907	22,929,310	4,595,855	
St. Clair .....	32,002,861	31,726,742	370,340	
St. Joseph .....	14,451,817	14,562,742		
Tuscola .....	14,652,530	14,492,229		
Van Buren .....	14,117,360	14,702,388		
Washtenaw .....	34,794,531	35,209,196		
Wayne .....	294,381,984	354,744,987	35,516,017	
Wexford .....	5,317,392	5,428,572		
Totals .....	\$1,418,251,858	\$1,537,849,903	\$80,522,366	\$87,600

Increase, \$119,598,045.

185 This is a correct statement of the facts as they appear from the records in the office of the tax commission. There will be a little variation in the final figures.

#### Cross-examination by Mr. WYKES :

The changes spoken of in the assessment roll, whether made by tax commission or local assessors, are made on the tax roll itself.

They were reported to us by the assessors, we compiled them, on blanks covering each county, and I took these figures from the footings of each county. In some places the amount of increase is small, in a good many cases, I would attribute the increase to the increase in the value of the property. This would be true of the majority of the increases made by the assessing officers.

A. F. FREEMAN, recalled for further direct examination, testified as follows:

(By Mr. BUTTERFIELD:)

Q. You did submit, then, to the State board of equalization, as I understand it now, the document of which Exhibit M is a copy?

A. Which I suppose to be a copy under the testimony of Mr. Gullifer.

Q. And did you personally attend the meetings of the State board of equalization?

A. I think I was there every day.

Q. What was the nature of those meetings—what went on there?

A. Well, each county would be called in the course of that whole meeting to see if anybody had anything to say with reference to how that county should be equalized, and usually there would be one, two and perhaps more representatives sent up by the supervisors, probably of the respective counties to attend that meeting and address the board of equalization with reference to the affairs of that particular county.

Q. State, if you will, your best recollection of the number of exceptions—were there very many exceptions to the rule that some representatives appeared for each county?

A. Oh, it would be a rare case; I would not say there was not some county that was not represented.

Q. Did you hear the remarks to the board of equalization by the representatives of the various counties?

A. Well, I think I heard every one. I may have missed some.

Q. Do you know whether the men who appeared there from the various counties were supervising officers or not?

A. Some were and some were not.

Q. As to those who were not supervising officers or assessing officers themselves, do you know whether they had qualification to speak on the subject of the value of property in their county?

A. Well, they appeared to have the qualifications, allowing me to pass my judgment upon it.

Q. Did they state to the State board of equalization what the fact was as to the assessment of property in their county, whether it was assessed at its true cash value or not?

A. Some did and some did not.

Q. I notice in the report of your board, Exhibit C, on page 36, this.

Mr. BLAIR: I object to the testimony given with reference to the statements of the representatives from the different counties before the State board of equalization in 1901 as incompetent and hearsay.

Q. (Continuing:) Referring to the persons who appeared before the State board of equalization "They rarely claimed that assessments of property had been made at cash value, as the law clearly

and forcibly directs, but in fact, admitted the prevalence of  
187 the plan of assessing property at a percentage of its value.”  
State whether or not that is a fact, whether you know that of  
your own knowledge.

A. Well this was a part of the report—

Q. I mean whether it is a fact as stated in that report I just  
read.

A. I adopted that, I didn't write it.

Q. Is it a fact?

A. I think so. It was always a comparison with the neighboring  
counties that they were talking about, “As good as the other  
counties.”

This was in the month of August, 1901; it extended into September. I cannot at present recall a single review that occurred in the State in 1901 prior to the equalization period, although there might have been one necessary for some particular matter. I mean, prior to the adjournment of the State board of equalization, which took place in September. Between the adjournment of the board of equalization in 1901 and the second Monday in October we went out and held some reviews; we didn't hold many because we didn't have much time, but we held some as I recall it. It was no general review, it was a special review, if any.

Q. Then up to the first day of January, 1902, had there been any general review held in this State by your commission at which all the property of any county was subject to examination with the exception of the county of Mackinaw, about which you said you were in doubt?

A. I think not. There had been examinations and work looking to that.

The field work upon which the report to the State board of equalization, Exhibit M, was based, had all been done prior to the adjournment, of course, of the State board.

Q. At the beginning of the year 1902 please state what was the  
conclusion of the State tax commission as to whether or not  
188 the general properties of this State subject to ad valorem  
taxes for State, county, township, school and municipal purposes, exclusive of that assessed under act 173 of the laws of 1901, was assessed at its true cash value.

Mr. BLAIR: I object to that question as incompetent, immaterial and irrelevant.

A. Why, we were of one mind, that they were not assessed at value as required by law.

Q. What was the opinion of the board at the opening of the year 1902, as to whether that undervaluation to which you have testified was intentional or otherwise?

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant, the facts should be stated.

A. Some of it was intentional, I haven't any doubt, and some of it was ignorance, carelessness, and some of it, I believe, the assessors thought they were assessing at value, and some thought so near to value that there might be differences of judgment about it—all kinds of belief, varying with different conditions in the assessing officers over the State.

Beginning after the adjournment of the board of equalization we began to employ new field men, or old field men who had been on the old work, and to visit the supervisors of the State during the October session,—continued to do a similar class of field work to that that had been done before.

(Under objection by Mr. Blair of incompetent, immaterial and irrelevant.)

When we visited the supervisors at the October session, some of them made no statements at all as to whether property in their assessing district was assessed at true cash value or some percentage less, and some did make statements. I have had frequent talks with supervisors where there would be a crowd of us together talking about the matter, and they would admit that they were not assessing property at value,—that would not include all the supervisors, not by any means.

Q. Take for instance a county where you held a meeting 189 with the supervisors of that county, did it happen that any supervisor admitted that the property in his own district was not assessed at the cash value, but that it was assessed at some percentage of its true value less than 100%?

A. Oh, yes sir.

MR. BLAIR: That is objected to as incompetent, immaterial and irrelevant.

Q. Did it happen that the man who made such a statement expressed to you also his opinion of the work of the assessors in neighboring townships in the same county?

MR. BLAIR: That is objected to as incompetent, immaterial and irrelevant.

A. That was always the reason assigned why he did not assess at value, because the other fellow didn't, that was the universal reason assigned. I scarcely know of any other reason. About the per cent. that came up in various ways, the first question was started with something like that, and they later ended so that I was compelled to answer that in that way.

Q. Now, to make myself clear, the point that I want to ask is this: Whether any of these men who admitted that they were assessing at less than cash value, and intentionally so, stated to you what the fact was with reference to the assessments of other townships in their county?

MR. BLAIR: That is objected to as immaterial.

A. That I think I have answered by saying that they would assign as a reason why they didn't, because their neighboring supervisor didn't, or they believed they didn't, and they used to discuss it out with me what other way they could do without putting more of a burden upon them if they should assess at full value and the others not do it. Could not tell how many counties visited during the fall of 1901. Could not reach more than one a day, the boards were in session from 10 days to two weeks. I think I visited 190 5 or 10 or 12, and may be as high as 13 or 14 counties during the session of the boards of supervisors, in the fall of 1901, 10 or 12.

There were few field men that got started that fall, but the number increased later. The work was of the same character as previously. And we required them also to take a good number of pickups to reach a value, meaning parcels of land of which there had been no sale. To talk to the supervisors, with the neighbors, and finally come to a value on that property, then later giving the percentage on the *assumption* that the supervisor was treating his people on the same relative standard of value, and by that method, we worked out, with the assistance of the sales, how a county was being assessed as to value. The work of the field men has continued uninterrupted until now.

In 1902 there was the general preparation of the fund of data to be gathered and sent out to the assessing officers of the State, and these mortgage matters being perfected, and the new mortgages that occurred were looked up, the record on them, and collecting all the data we could about the large property of the State, and among them was the reports of these corporations to the secretary of state, and we began last year the collection of a large lot of data respecting the vessel property of the State, and anything that we could gather that would be or that we thought would be a source of information to the assessing officers, and sending it down to them at the assessment period, and also getting together as a board and looking over the reports as they would come in from the field men and considering the details of the office and giving directions to the employés. In our visits to the different counties while the assessment was going on in the spring of 1902 we took data to them that had been collected, and presented it to them, and discussed out conditions in their particular assessment district to see what they had to say. That was prior to the first of June, prior to the completion of the roll.

Q. And you then I take it, urged upon them the importance of bringing their assessments up to true cash value?

A. Well it was always urging them, and then we would show them the data and see what they had to say respecting it, to see if they would not agree with us.

Q. What was the common result of those meetings, what did the supervisors have to say?

— . Oftentimes supervisors would admit the result and say "That is

about how I am assessing." Some of them would claim that they were assessing at full value notwithstanding the data, or say to the contrary, some would claim they were assessing better than our per cents would show them to be, not at full value, but better, and some would admit that was about right, and some would claim that they were assessing already at value.

Q. Now in those examinations that you made by a meeting with the supervisor or assessing officer in the year 1902 prior to the first of June when you had with you the work of the field examiners, state whether or not the board became satisfied that the percentage shown by the computation from the work of the field examiner was a percentage which extended quite uniformly over the assessing district?

A. Why, we would always ask the supervisor after these admissions, after his claims, if he was assessing all of his property upon the same standard of value and sometimes we put them upon oath upon that question, and he would say that he was using his constituency all alike.

Q. Did you find any exceptions to that?

Mr. BLAIR: I want to have it understood that my objection covers all of these talks with the supervisors and any admissions made by them, so as to avoid making constant objections.

A. No, sir, I cannot recall any.

192 I can't recall any exceptions to that during 1902. In 1902 between the first of June and the second Monday of October the commission was having special and general hearings upon the properties in different parts of the State as fast as we could get to them. In 1902 all the property was subjected to an examination by the commission in four counties, Macomb, Bay, Kalamazoo and Jackson. We were in St. Clair, but did not include the entire county, for the reason that some of the men had come to the standard we asked for, in the meeting in the spring, and some had not. We held reviews in the balance of those townships.

Where they had done all we asked for, we didn't review them. We had no occasion for it. We had percentages from our field examiner in portions of the city of Grand Rapids, where special review was not held, which showed the assessing officers had not assessed property at 100 per cent. But Mr. Dust personally went over the city with those members, and did considerable of the work—we assigned it to him because of his special knowledge of that class of property. We could not cover that whole city. We found what we termed indiscriminate work, brought up some portions of the city where we thought they belonged, and other portions were already there or nearly there. There were some counties by the second Monday of October, 1902, which had been completely worked by the field examiners in 1902 but which had not been reviewed by the board.



Q. Sometime near the close of the year 1902 did your board determine the true cash value of the general properties in the State?

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant.

A. We did.

Q. What did you determine that true cash value to be?

Mr. BLAIR: I object to that also as incompetent, immaterial and irrelevant.

A. 1715 millions.

193 Q. Did your board make a report to the governor of the State covering the period of 1901 and 1902?

A. The board did.

Q. I read from Exhibit C, being your report, on page 17, the following paragraph: "It would be impossible to enumerate the questions raised and the matters discussed at those meetings, but with them all we emphasized the importance of listing all property subject to taxation, and assessment of all at its cash value, endeavoring to point out that equal taxation and uniformity of assessment can be accomplished in no other way; that while the old plan of assessing property at a percentage of its value prevailed and each supervisor uses his own judgment of the percentage to be applied in his district, there is danger of as many different percentages as supervisors in a county, and the property of no two counties will be assessed by the same standard of value." Was that statement true at the end of the year 1902?

Mr. BLAIR: I object to that question as incompetent, immaterial and irrelevant.

A. It was true.

Q. You have said that a large number of assessing officers have admitted to you that they have intentionally assessed the property in their respective districts at a percentage of its true cash value less than 100%? Will you please give us your best recollection as to the total number of assessing officers who have made such an admission to you as a member of the tax commission up to the first of March, say, of 1903?

Mr. BLAIR: I object to that the same as before, it is incompetent, immaterial and irrelevant.

A. I would not be able to state the number that has admitted it to me.

Q. Give your best recollection or judgment of that number.

194 A. I am willing to give my best judgment of at least a certain amount, because it has extended so long and I kept no record of it, it has been going on through the entire period of my holding this office; I should say at least 500 in this State.

Q. Did you subscribe and make oath to the answer of your board

to the order to show cause in the mandamus case commenced in the supreme court by the Detroit board of education?

Mr. BLAIR: That is objected to as immaterial.

A. I did.

Q. I read from that answer——

Mr. BLAIR: I object to his reading from the answer and I object to the character of the testimony called for. He cannot sustain his own witness by reading statements made by that witness.

Q. (Continuing:) Paragraph 11 as follows: "That as this respondent believes and charges the truth to be, the undervaluation of the property of the State subject to ad valorem taxes for State, county, township, school and municipal purposes throughout the State was not the result of accident, inadvertence or mistakes in judgment, but that such undervaluation of said property was in a large number of the municipalities of the State intentional and general, and that this practice of undervaluation has been in vogue in this State for a great number of years, and that if the court desires to examine the data upon which the foregoing statements are based, it will be furnished." Are the statements of fact contained in the paragraph I have read to you true?

Mr. BLAIR: That is objected to as incompetent, immaterial and irrelevant.

A. They are true.

195 Cross-examination by Mr. BLAIR:

I was appointed in July, 1899 by Governor Pingree. At this time there was considerable agitation with reference to equal taxation. The governor was making it a special feature of his administration, and I was in sympathy with him,—one of his supporters endeavoring to bring about this result along the lines that the governor had mapped out.

The agitation subsequently resulted in the adoption of legislation for the purpose of carrying out the principle.

(Under objection as irrelevant and immaterial by Mr. Angell) A bill called the Atkinson bill was introduced at the session of 1899, there were quite extensive hearings upon it in the house and senate, the railroad companies appearing before the legislature. I was a supporter of the idea involved in that bill, which was passed and approved by the governor.

The Atkinson bill provided for the appointment of a board of assessors or commissioners, and I advocated about the State the ideas contained in it. The theory of the people was that certain great corporate institutions of the State were not paying their just share of the taxes of the State, and I believe that to be true, and was in favor of such a reform in the taxing system, that the property of those corporate institutions might be reached and compelled to bear

its just proportion of the burdens of the State. The Atkinson bill provided a scheme somewhat along the lines of the present law, and for the determination of an average rate.

The bill provided what should be taken for a dividend and what should be taken as a divisor.

After our appointment we got together, after taking the oath of office, talking about the commission, what to do, and laying plans and making policies.

No provision was made in the law of 1899 for the employment of field men, and in that act there was no distinct provision for the employment of a single clerk beyond a secretary. In order to employ field men we were obliged to go to the State board of auditors.

By the act creating the board of assessors, passed in 1901, we were authorized to employ clerical assistance. The act did not take immediate effect.

In the employment of field men, the very first man that was employed was at my suggestion, and was Samuel Bibbins. I knew his general qualifications, personally, and brought that to the knowledge of Mr. McLaughlin, and it was with his consent that he was employed. That was soon followed by another in a similar way. That was the course generally pursued.

The field men now in our employ are; T. J. G. Bolt, Muskegon county; Samuel Bibbins, Washtenaw county; W. G. Davidson, Midland; H. E. Stone, Flint; F. A. Mansfield, Grand Haven; F. H. Farnsworth, Detroit; A. H. Rolph, Escanaba; S. G. Horton, Goodrich; H. J. Wilkinson, Detroit; James L. Gilbert, Chelsea; B. F. Beekman, Charlotte; George E. Cogswell, Grand Rapids; T. C. Howard, Milan.

Those employed before fixing the rate in 1902 were; A. P. Horton, Muskegon; Coryell L. Tibbette; M. B. Kirby, Chesaning; M. F. Case, Washtenaw; Arthur L. Rich, Newaygo; John W. Perkins, Detroit; H. L. Freeman, Genesee; John H. Thayer, Oakland; Charles M. Smith, Wayne; E. M. Ledyard, Arenac; Eli L. Brown; John S. Wing, Eaton; John Caldwell, Missaukee; C. E. Whitney, Muskegon; B. Griffin, Saginaw; Henry J. Footlander, Macomb; George Wyckoff; John L. Murray, Muskegon; Fred E. Hazle, St. Johns. Louis Smith of Saginaw and Winslow of Kalamazoo did special work.

They were not all employed all of the time. They were substantially all working during June and July and August to the opening of the meeting of the board of equalization.

We had 32 men in all employed during the preparation for making the report to the State board. The two lists read, the second being Mr. Gullifer's list, total 32. The first half of May there were 6; second half, 18; the first half of June, 17; second half of June, 22; the first half of July, 25; and second half of July, 26; first half of August, 28; the last half of August 26, and in addition Mr. Winslow and Mr. Smith. A portion of these men continued in the

commission's employ, but they were all discharged at the close of the equalization work, and subsequently men began to be employed gradually. Each commissioner being allowed to employ a man. I believe that the first list given is a complete list of those employed since the meeting of the board of equalization, being 13 in number.

The 32 men employed during the spring and summer of 1901 were to cover the whole State, but they didn't. The lower peninsula was covered satisfactorily, with the exception of Roscommon and some other counties. The upper peninsula was covered in a way, differently somewhat from the lower peninsula. We did not feel that any of the men we had in our employ were competent to go in and judge of the values of the properties of the upper peninsula, especially the mining property, but we gave directions to the men we sent there to look over general properties, exclusive of mining properties. We did not arrive at a value for Houghton, Gogebic, Menominee or Iron counties, but submitted data in regard to them.

In Houghton county we made an estimate of the general properties similar to that in other localities, and when it came to the value of the mines, we submitted the value of the stocks at three different times. Omitted giving estimate of the value of those counties as we did not have sufficient information to make a reasonably accurate estimate.

198 We did not have men in the upper peninsula through the period covering the equalization time, as they were all employed in the lower peninsula, but as we approached the close of the time, we went into the upper peninsula.

So far as I know they examined particular parcels of property to come to an intelligent judgment of their nature and value. We relied upon what they said, we had generally assumed that they told the truth. As a general rule we did not look over their work, that was done at the office after the reports came in. We sent men whom we thought would be competent to judge of the kind of property examined. Think they would be strangers so far as living there would be concerned. If there were but few sales, not enough as a criterion of how the supervisor was performing his work, then would take what I have called here frequently "pickups."

We directed and got those so that we would have sufficient data. There was no uniform percentage of the number of pieces examined to the number of pieces of assessible property in the district. It was small in comparison with the volume of property. As a clear error in one particular description of property would disastrously affect the entire valuation, that was one of the purposes of telling the men to look into glaring inequalities, and unless they could verify the sale, we used a discretion upon their report and threw out a lot of them.

Where there was something extraordinary about a transaction it would be the judgment of the board that it should be eliminated.

I don't want to say that that was general, but we did it in a lot of cases when it came to our attention.

The reliability of Exhibit A came up for discussion on the board. I did not regard it as reliable enough for me to base some things on. It was not made the basis of the report to the State board of equalization, but we relied upon other work.

I took it as leading me to the conclusion that the property of the State was not assessed at value, but not reliable enough  
199 to make a report to the State board of equalization on.

Washtenaw county has been regarded as one of the good assessed counties of the State, all of the commission seemed to agree upon that.

We are going to have a general review, and expect to hold it there this year. We have regarded that county as approaching true cash value, along the 90's. I can't say that the county as a whole is above 90 per cent., in the light of our examinations recently.

Where the field men report certain percentages of value, we did not accept that as final, but passed upon it ourselves, and sometimes after talking with supervisors and getting their side of the question, adopted a different percentage, but this has been rare.

Did not take part in the general reviews in Bay and Jackson; though I have been in reviews in those counties, but not the general one.

(Under objection by Mr. Angell.) If the counties of Bay, Jackson, Saginaw, St. Clair, Macomb, Kalamazoo, Washtenaw and Manistee, as reviewed, should be less than the value of those counties as reported to the board of equalization, I would regard that review as of more reliability than the report to the State board of equalization.

This would, in my mind, lessen the value to be attached to the data reported to the board of equalization. If the real estate of the counties named was reported to the State board of equalization at \$287,723,155, and upon review fixed at \$243,289,850 or 84.6 of the amount reported to the State board of equalization, I would say that the work done later is much more reliable, and I should rather choose to act upon it than upon the other, and it would cause me, to a certain extent, to seriously doubt the value of the information upon which the report to the State board of equalization has been made.

200 We had a general review in the county of Kent, outside of the city of Grand Rapids, and finally reached the correct valuation which is in the report (\$94,498,141). There is a serious discrepancy in the amount of \$106,244,208 for the county of Kent reported to the State board of equalization, as found on pages 374, 375 of Exhibit F to the bill, but we have not covered as yet, by a review, the city of Grand Rapids.

And did not pass the city of Grand Rapids as correct. We have for certain reasons quit Grand Rapids, but not because I thought it was properly assessed. We had several hearings there, and the talk

on the board was that we had better not touch the city, as we had jerked up a good many personal properties there, and things were getting somewhat feverish, and we had better not pursue it too much in one place, but go somewhere else and keep up the work.

In Saginaw city I think the assessor is doing the best work of any in the State. It was accepted practically as being at cash value.

Attention of the witness called to the report to the State board of equalization in 1901, page 175, giving Saginaw county as \$41,997,094. The value of the same county after review, given in 1902 report, was \$39,442,671.

I think that is quite close, when you get into the millions like that and only differ a million or two. A difference of two and a half millions in a county assessed at 39 millions we regard as quite close. If the cash value of Saginaw county, according to our best data and information had been \$41,997,094, and the assessing officers had assessed it at 2½ millions less, we would have gone into counties where the work was needed more, but would not have approved of the assessment without an absolute review and consideration of the property of the city of Saginaw.

Had a general review in Kalamazoo. Attention of witness called to valuation for Kalamazoo, reported to board of equalization 201 as \$34,305,210, and the valuation placed on review as being \$29,599,282.

I do not regard that as a trifling discrepancy, but don't know whether the general review covered the city of Kalamazoo.

Attention of witness called to figures for Jackson county, reported to board of equalization at \$37,838,738, and as fixed upon review, \$34,666,749. Does not regard this as a trifling difference, too much in a county of that kind. Does not think that goes to show report to board of equalization was unreliable. It was simply the best that human mind could do, and we did it to give them all the data we could.

We considered the way these things were going, so far as reviews had been held when we came to fix the average rate in 1902. We are trying to get this as nearly correct as human mind can get it. There is no such thing as accuracy, and no man can go to a piece of property and say what the property is worth with the same accuracy that he would measure a foot of wood or a gallon, but it is a matter of judgment; there are many instances where men sell property for much less than it is worth.

And sometimes it is sold for more than its value. The statute fixes the selling price as the cash value. It should apply in all cases. Did not think that fixing the amount of 1715 millions as the total cash value of the real and personal property of the State was in the nature of a guess.

Did not regard that something over 100 millions personal property increased valuation went into the 1715 millions, and did not regard that any went in, or that there was any increase at all in personal property over the assessment made by the assessors. I had



my ideas as to the value of the real estate made up from my general understanding of the work upon this commission and the various data that I had collected in reference to it. The 296 millions does not represent the addition made to the assessed valuation on account of real estate alone. When you say 296, it was not gotten at in that way, but resulted from the work.

It was made up of the real estate, as I viewed its value, and the personal property as assessed. A great deal of discussion took place on the board of the vast amount of personal property that was not assessed in the State. Many of us speculated that the State was perhaps worth as high as two billions of dollars, and many of us believed it as a matter of belief. It did not enter into the fixing of the ultimate sum. We could not do it, we knew no place to stop. I did not regard that I did include personal property increase. I don't know what the others did respecting it, or what they included in reaching the total sum. There was a lot of talk about what different ones should use in arriving at this 1715 millions, and so far as I am concerned it finally crystallized into the action of the board.

I don't know what the members of the board made up their figures from to reach that 1715 millions. I don't think there is any record of the method of figures by which it was reached. Didn't take 1702 millions as a starter, but it had much to do with my determination. I thought of it and we spoke of it. I don't think it was the basis upon which the board made its final determination. It was not my basis at any rate. It was talked about. The whole understanding of the board was talked about, I talked of the work and the data that came out of the matter that appears in this Exhibit A, and that entered into my calculations to some extent in settling the matter in my mind that the property of the State was not assessed at value.

Q. That is to say you took your data there, which you considered not to be over and above reliable, and you made a guess as to how reliable it was.

A. No.

Q. Didn't you?

A. No, sir; not that.

Q. How did you definitely arrive at your figures?

A. Well, sir; I was about to tell you; taking all the data we had and all that I had seen and understood and going over this State for the last three years then, a little more, and out of it all coming to this conclusion, that the State was worth the 1715 millions, although I will admit that when you get down to an exact point, the five of us, the different members of the board, differed a little, some were above and some were below, and we centered in there all of us with the figures."

(Objection by Mr. Angell to this line of questions, and motion to strike out testimony by which the judgment of board is sought to be attacked as regards total cash value.)

At that time there were few counties from which we had field notes in comparison with the whole of the State. The data which we have from other counties are those gained in my wanderings about the State.

I do not consider that this would be definite information upon which to base an accurate statement of the value of property in a county.

“Q. And in the final analysis of your action, in determining these values, it comes down to this: You made the best guess you could from such information as you had received outside of your field men in those counties?

A. Well, I reached the conclusion like this—

Q. (Interrupting.) Now answer my question, I want to get at that very point; whether you did not as a matter of fact at last make the best guess you could outside of those counties where you had this valuable information?

A. I don't regard it that the guess of seventeen hundred and fifteen as you call it was a guess.

Q. I say outside of where you had this valuable information from your field men?

A. Well, I do not regard that total sum as a guess. I think I can say that there is that much of property in the State beyond a doubt at the least amount.

204 Q. I want to get back to that question again and will insist upon your answering my question. In so far as those counties in which you had not had your field men at work and had none of their data, if you did not so far as those counties were concerned make the best guess you could as to the valuation of those counties?

A. No, I don't regard it as a guess.

Q. What did you call it?

A. I called it that that certain sum was a certainty in my mind.

Q. It was not mathematics in those counties?

A. No, sir.

Q. Let us get away from the fixed sum. It is not the theory of this statute is it that you are to find out what something is worth at least?

A. It is my theory that we should find out that it was worth a certain amount, that I was willing to rest my conclusion upon.

Q. Don't you understand it to be the theory of that statute that you are to find the true cash value of the property?

A. I found it in my judgment to be that amount—in my best judgment.

Q. Didn't you base that judgment upon simply guess work upon your part?

A. I don't think so.

Q. In the counties in which you had none of this information?

A. I don't think so.

Q. How did you get at it—take a county where you didn't have

any field men, where you had no general review, how did you go to work to say what that county was worth?

A. As I say, I brought to my understanding all the data I had collected.

Q. Give us what you had, that is what I want to get.

A. As I told you, it was the examination made by the State tax commission from the beginning down to that time, so far as  
205 I was concerned, and among that information that came to me was the information collected by the first board, next the field men's work, and next the way things were going, so far as we had gone with this accurate work, as we called it, then my talks all over the State with supervisors, and the information that I had obtained in my wanderings, as you say.

Q. The way things were going?

A. So far as the reviews had much to do with it, and finding matters in that way and justifying that.

Q. Did you find two counties that were assessed precisely alike?

A. No, sir.

Does not recollect any townships where the percentage was the same in each, although it might be. As a matter of fact they varied because they were doing a different assessing all over the State. As a matter of mathematics could not determine the exact valuation of a county. The soil, location, and situation of the property entered into my mind largely, and the field men examined the quality of the soil, did not take it for granted that that kind of soil and surroundings applied to every single section of the 36 when they made their investigations of one.

The idea was to take a goodly number of properties, 15 or 20 or 30 or 50 and determine the values of those particular properties and the assessment upon them and strike a per cent., as to those, then those supervisors would swear that they are assessing their properties on the one relative standard of value, serving everybody alike, but not at the true cash value.

They would state that they were serving people alike and putting everyone on the same standard, whether it be 80 per cent. or 100 per cent., or any other per cent. Every one of them swore that he was assessing property on the same standard of value, but did not say that the standard of value was cash value. In some counties they would claim they were assessing at cash value, and some of them would not.

206 I have not always asked them whether they were assessing at true cash value, and they could not always claim it. As to whether they claimed it in a majority of cases, it is pretty well divided, I will not say which was a majority, it has been an even balanced matter. Some would admit one way and some another.

I know that under-valuation was intentional and general because men have admitted it to me. Could not give names of the men who admitted it. The stenographer was with us but little until this year,

some last year, can't tell how many sessions he attended in 1902, he may have attended them all.

And can bring but one place to my mind where supervisors admitted that they were wrongly assessing property. Since I have heard that the stenographer was subpoenaed, I have told him that I wanted him to look up and tell me where supervisors have admitted in his record so far as it did extend. I do not think he stated to me that he was able to find only two instances in 1902 and not any in 1901.

“Q. Where did you get at this sum of 500—at least 500?”

A. Well, I haven't any doubt in my mind that more did, but I don't care to risk my oath beyond 500.

Q. That is a matter of guess, isn't it?

A. That 500?

Q. Yes, sir?

A. I am willing to swear to it that it was that amount.”

Could not enumerate the supervisors that did that. Groups of us would be talking at sessions I have had with them, and I would ask them why they didn't assess at cash value? And they would simply answer: “You ought to know why we don't; the others don't and I can't. Would you do it if you were a supervisor?” The other commissioners had the same opportunity for hearing these statements, though I have had more reviews and examinations than they.

207 The fact that an increase of 296 millions in the general properties of the State had no concern with me. I was trying to find the value because, as a piece of mathematics, to produce equal taxation, in my judgment, that has to be done.

(Objection by Mr. Angell as irrelevant and incompetent.)

I think we all talked that if we took the figures from the local assessors, that that would increase the rate so far as the railroads were concerned to such an extent that they would bring suits to set aside the law, and that the school moneys would not be collected. It was a source of common talk among us. I don't know whether we have said it frequently, it was a conceded fact that it would do that. We thought over that fact. In fixing the average rate we had a legal opinion upon which we based our right to fix it in the way we did. McLaughlin was opposed to the view expressed in that opinion. The opinion was Attorney General Oren's.

Q. Did you have Mr. Oren's opinion at the time you fixed that rate?

A. Yes sir, we had an opinion from him.

Q. Did you fix that rate on the 13th day of December?

A. I could not tell now.

Q. You fixed it on Saturday, didn't you?

A. I would not be able to say that; I don't believe it was Saturday because I hardly ever remained a Saturday; we always get home if we can and are out of here on Saturday.

Q. The roll itself I suppose would show?

A. The date fixed there?

Q. Yes sir?

A. Well, that date was like this, the way that came to be; we looked at the statute and found that must be fixed on or before the 15th day of December, and the 15th of December falls upon Monday and we dated it as of the 13th, although we had established  
208 the fact and the certificate had been made up a day or so before that, and we reached the general conclusion that that is the way it would be immediately after we received Mr. Oren's opinion.

Q. As a matter of fact you did have that rate actually established on the 13th of December?

A. I don't think that I was here either, I think it was signed—I think I went home Friday.

Q. Wasn't that published in the Detroit papers on Sunday morning the 14th?

A. That certificate?

Q. Yes sir; the statement that you had fixed the average rate?

A. Well I am inclined to think you may be right, I am not sure about that.

Q. You had fixed it on the 13th.

A. Yes sir but it took days before; legally and technically on the 13th, that is the date it seems it bears.

Q. As a matter of fact you hadn't any opinion from Mr. Oren on the 13th?

A. As a matter of fact I had a verbal opinion quite a spell before that.

Q. You did?

A. I did.

Q. Didn't Mr. Chase at the room of the Downey house where you were holding your final meeting to establish that rate show you a telegram from Mr. Oren from the city of Washington in which Mr. Oren stated that he wanted two opinions prepared and for Mr. Chase to meet him on Sunday at Detroit and that he would then determine which one of those opinions he would decide upon.

Mr. ANGELL: I object to it as irrelevant, it is a matter not affecting this controversy at all.

Q. Wasn't that the fact?

A. Something like that. Before then we had received an opinion, or I had received a verbal one the secretary had handed me his opinion.

Q. Did you consider when you saw the telegram from Mr. Oren that he wanted to act upon two opinions as to fixing the average rate, and asking his deputy to meet him in Detroit on Sunday—

209 A. (Interrupting.) I didn't understand it as you have stated it that Mr. Chase did, but he had some talk that there was cor-

respondence or telegrams going back and forth, he could not reach Washington where he had gone, he had swung into New York State somewhere and he could not reach him in time enough to settle some dispute going on between Mr. Wykes and him as I got it from Mr. Chase.

Q. That dispute was as to which opinion should be given?

A. As I understood it, Mr. Chase said to me that undoubtedly it will be his opinion because when he makes up his mind that is it, and I got it from him that the opinion goes as given to the board, I reached that understanding from the talk I had with Mr. Chase.

Q. Did Mr. Chase say that to you?

A. Words to that effect, as I understood it.

Q. Wasn't it understood between you and Mr. Chase that the board would not fix that rate until Monday, until after Mr. Chase had had an opportunity with Mr. Wykes to consult with the attorney general at Detroit and submit this whole question to him?

A. That was not my understanding, it may have been Mr. Chase's but it was not mine because I had received an opinion from Mr. Oren verbally and another one in writing.

Q. You had been interviewing Mr. Oren very frequently upon that subject?

A. Yes sir, and I tried to get you there too.

Q. And you had been insisting upon this opinion which you finally adopted?

A. Why, it was my view, to produce equal taxation there must be an equalization of some kind, a comparison that was somewhere near right.

Q. You labored with him to induce him to accept that opinion?

A. I don't know what you call laboring, we discussed it at much length in the way of an argument.

Q. Time and again?

A. No sir.

Q. Can you remember a great many times discussing it with him?

210 A. No, I was there once only discussing it with him, I remember one whole day's discussion with him nearly, upon that question and one or two others we had.

Q. How long before the establishment of this rate, was that—how long before the 13th of December?

A. Well I could not fix dates exactly, but along in November; I had been studying this question so much I had reached the conclusion that if we made a roll we could not stand up under it unless a divisor was produced that was somewhere near right and the thing was with me continually, I was not producing equal taxation, and it was bothering me.

Q. Weren't you at him continually?

A. No sir. Finally I wrote you and wrote Mr. Oren to fix a date when a conference could be had.

Q. I don't care about your going into that.



A. I have your letter in reference to the matter and I would like to produce it and put it into the record to show the good faith with which I acted.

Q. It was not a good letter anyway.

A. I shall ask the privilege to do it.

Q. After that letter had been written to you and after this rate had been fixed in the consultation that I had with you, I informed your board, did I not, that in my opinion that rate could not stand as a matter of law?

A. You did.

Q. And as a lawyer and as the attorney general of the State I deemed it my duty to take the opposite position in the supreme court.

A. You did.

Q. I gave you my reasons for that also, with reference to the attack that had been made upon the State by the railroad companies.

A. Yes, and I told you I thought you were jumping out of the frying pan into the fire, I told you that.

I also made some affidavits in this case.

211 The affidavit was probably made on the 29th day of May.

It was not held by me awaiting developments or advice, and I do not know that Mr. Butterfield had any purpose in holding it to obtain other affidavits. I did not request him to hold it.

Knew of Mr. Sayre's making an affidavit, saw it, but did not read it over.

“Q. Had his affidavit been made at the time or was he considering whether he would sign it or not?

A. Well, I will have to tell you the details.

Q. I asked you that question. Had he signed his affidavit at that time or was he considering whether he would sign it?

A. It seems to me he handed that affidavit over to Mr. Butterfield and then an impulse seemed to strike him and he went and requested it back again and then he came to me and said, ‘Here, I want to take some counsel on this matter in view of a fact I have just learned, that Mr. Dust has declined to sign the affidavit.’ We hadn’t a thought of anything being irregular about the thing; I said, ‘If you are going to withhold yours, if there is any question about yours, I shall withhold mine,’ and I went to Mr. Butterfield and said, ‘Here, Mr. Butterfield, what is there about this matter, is there anything wrong about it, do you know of anything wrong about this matter?’ ‘Why no,’ he said: I said ‘Mr. Sayre and I desire to take some consultation over this matter before you allow these affidavits to go.’ And he said, ‘All right; and Mr. Sayre went to Mr. Butterfield and obtained the affidavit from him.

Q. Who did you consult with?

A. Well, Mr. Sayre told me that he had learned from the register that Senator Atwood was in the city, I had not seen him at that time, and he said, ‘I am going to see him over night and consult with him about it.’ I said, ‘Very well, that is satisfactory to me,’

and I learned the result of that matter, and we all of us went to some theater that night, the four of us, and he agreeing with me to see Mr. Atwood over night, saying also that he would be  
 212 compelled to go away on the early train because he was a pallbearer to Judge Durand's funeral and he would be compelled to take an early train, I said, 'Very well, then I will see Mr. Atwood myself in the morning and learn the result of your interview, and I did not succeed in seeing Mr. Atwood until something like noon, maybe a little after noon, I am not sure about that, but I did see him however, and consulted with him.'

Q. Did he advise you to sign it?

A. He said that he had told—he had wired Mr. Sayre that he saw nothing irregular about it at all; we had already sworn to the facts, and it appeared that Mr. Atwood had seen Mr. Sayre's affidavit, in the talk that I had with Mr. Atwood; and he said there was nothing irregular about it, we had already told the same thing at the time of applying for a preliminary injunction, it was not testimony, and it done no harm, not at all, and he wired Mr. Sayre to that effect.

Q. You did not consult with the governor about the matter?

A. No, sir; I went at it as innocently as a child.

Q. You did not consult with me about it?

A. No, sir.

Q. Didn't it occur to you, inasmuch as you were a State officer, regardless of the antagonism that had come into our relations in our opposing views in the city board of education case, that as I was the attorney general of the State representing the State's interests in these very important cases, the most important that had been brought against the State that it would have been proper to have consulted me with reference as to whether you should make these affidavits.

MR. ANGELL: I object to that as immaterial.

A. No, it did not occur to me, and I will say to you, it might have been proper if it had occurred to me, and I probably would have willingly done it."

Mr. Dust's refusing to sign the affidavit put me on inquiry to a certain extent.

Counsel reads from the affidavit attached to the bill, the paragraph: "Deponent further says that he has been present at  
 213 the examination of a large number of assessing officers of said State when said assessing officers have been interrogated as to their method of arriving at the assessed valuation of the property in their respective districts, and that at least 500 of such officers have stated that they uniformly and intentionally assessed property in their respective districts at a certain percentage of its true cash value."

Q. You say that was true, and that that actually occurred, that not less than 500 of the assessing officers of this State stated to you

that they had uniformly and intentionally assessed the property in their assessing districts at less than their cash value?

A. I perhaps did not use the word 'uniformly' or 'intentionally.'

Q. It is in your affidavit?

A. I may have adopted those words, they may not have said it in those words, but they said what they did and that would be uniformly and intentionally, as I view it.

I am willing to swear that at least 500 of them admitted to me that they are not assessing properties to value. It is not my interpretation of that affidavit that they used the words "uniformly" and "intentionally," the identical words you state there; but you tell what you said when you give the conversation, and that is what I did upon that.

The duties of the State board of tax commissioners are defined by act 154 of 1899. Section 150 requires it "to prefer charges to the governor against assessing and taxing officers who violated the law or failed in the performance of their duties in reference to assessment and taxation, "And in the execution of those powers the said board may call upon the attorney general or any prosecuting attorney in the State to assist said board."

A. I am very familiar with that section. And understand it as a part of the duties of the board.

As a guess, we made complaint to Governor Pingree of 150 or 160 assessing officers under that section. I think, too, that we proceeded against some criminally.

214 We just got the matter brewing against a lot of them and Governor Pingree went out of office, and that was the end of the proceedings so far as the preferring of charges were concerned. After that we preferred no charges.

That was a part of the duty of the board as much as it was the duty of the supervisor to assess at true cash value, but there was too much work to be performed. We could have made the complaints where the man himself furnished the information to convict, or could have called upon the prosecuting attorney. This is one of the things we talked about, and we concluded it was better to get the property on the rolls. The board concluded that that was the better way.

Q. The board concluded then that it would disregard the statute?

A. If you are pleased to put it that way.

Q. That is the way you have put it.

A. The statute made a plain provision to do something else, and if we were engaged in doing something else we could not make criminal complaints, we couldn't do it.

Q. These things were designed as means of bringing about the other things?

A. Yes, sir. The great duty was to see that the property was assessed at value, that was the first thing named, and if you do that

you won't be engaged in a single prosecution in the State, you can not perform even the first duty."

The best work that we could do to find out the values of property in a county was to assemble the board of supervisors during the assessment period from April until the close of May, and interview them as a body, and then meet them again in the fall, and I have attended the January meetings some. That is the way generally that I got my information. I have walked up and down the streets many a time with an assessing officer of a city and asked him how he assessed that block and how he assessed this, and what amount he had on it, and so forth, and perhaps gone out into the country, but very little.

We all have our ideas about property. Don't think it would be a reliable way to undertake to determine the value measured by the selling price by just looking at it. In making the review and fixing the values of property, we acted almost entirely on hearsay—or testimony. That is, if you call everything that is reported by others hearsay. But I look upon it that if the supervisors were giving facts that is testimony, just the same as if we took it in court.

In making up the information to the State board of equalization we had a number of different guide sheets; one of them contained the field man's values, another contained the pickups and the third combined the two.

We discussed in the board, which was proper, to take the sales or the pickups and to gain a percentage from them and decided to give the State board of equalization both for them to use in the way that they thought best. They were to determine the fact, and they determined it at \$1,578,000,000. There were two, as I remember, pickups and transfers, and I would not say that the other was not given to them. The different methods got different results, though there was not enough difference to talk about.

I have had consultations with Mr. Butterfield; he was here an hour a week or two ago. McLaughlin and Dust were present. I don't know that I have given him information aside from those times when Dust and McLaughlin were here. He did ask me to meet him somewhere, and I met him at the St. Clair hotel, and he asked me if certain data could be had at our office. A spell ago I was taking a train and I went up to his office and made a personal call.

I have not furnished Mr. Butterfield with any information, in reference to this portion of the case, any more than that if he asked me if a certain thing existed, I would answer him and he has asked me for certain data and I have answered him in regard to it.

I can recall one time that I was at his office which occurs to me. There was a hearing at Marshall and the train was four hours late, and we went up into his office to see if we could not get a fast train to stop for us and let us off for that hearing. I don't recollect being at his office but once since the filing of this bill.

The members of the commission occasionally make mistakes, and sometimes over-assess and get above cash value. This has occurred in certain horizontal raises.

I presume the over-assessments by the commission have occurred in a great many instances.

I think that we were a more prosperous State in 1902 than in 1901, when we got the sales values. And in my judgment it has been a continuing prosperity since. And since the report to the State board of equalization, new properties have come into existence and some have gone out. Large new properties have come into existence and large additions to property have taken place. It is a great State, and would naturally produce some.

The percentages in the different townships vary. I know of no concert of action among assessors of different assessing districts, unless it might be in a city having supervisors. There was no concert of action between the supervisors that I discovered.

Attended meetings of the State board of equalization every day, endeavoring to assist them in arriving at true cash value of the property of the State. They adopted our advice to a large extent, taking all the data they could get. I suppose that they were attempting to find the true cash value of the property of the State. It was a frequent remark that every representative of a county came with a tale of woe with reference to his county, and was maintaining that his county was assessed at much above what it ought to be and above what everybody else was assessed at, and that he ought to be lowered.

#### 217 Redirect examination:

Witness shown Exhibit M. The figures on each page under the footing of column headed "Total valuation" are evidently the equalized value as fixed by the State board of assessors.

The first figure appearing below the printed total of the column is in each case the equalized value as fixed by the board of equalization.

Mr. BUTTERFIELD: We desire to substitute for Exhibit M the loose sheets marked "M-prime" which are the original of Exhibit M, the report of the State board of tax commissioners to the State board of equalization in the year 1901.

A. F. FREEMAN resumed the stand, testified as follows:

The WITNESS: I desire to make some explanation of my testimony.

Mr. BUTTERFIELD: Is there anything you want to explain?

A. Yes, sir; there is.

Q. Proceed.

A. At the time that the members of the board of assessors was making up the total amount of 1715 millions there was a great deal

of talk occurred by the members of the board as to personal property not assessed and among it was stated the vast sum that appeared by the banking commissioner's reports of money on deposit, that was one of the things; we talked of the fact that none of us in our experience over the State had found watches assessed, very few indeed, diamonds were not in the statements, or jewelry, and it was a rare case to find any household furniture in one statement and supervisors and assessors over the State admitted that those things were not on the rolls—not in the statements or on the rolls as a part of the personal property.

218 Mr. BLAIR: I object to that as immaterial.

The WITNESS: We all agreed, however, with them, we had no right to speculate upon it, and then there was the fact of the large amount of foreign corporation stock that was believed to be held in the State and scarcely ever any found in the statements; it was felt that a large amount of bonds of corporations was not in the statement; and I remember we talked about that, and I remember particularly that while we believed as to those things, we had no right to take this into consideration, so far as I am concerned, in arriving at that amount I did not, I reached my conclusion from all the knowledge I had of all the personal property that was assessed.

Respecting the affidavit, I want to make one statement: There is another reason for the giving of this affidavit; it was going into a court and there could be no harm because a court would take care of the proposition, the affidavit wasn't testimony and it was my desire, I will say it frankly, that the court might have my views respecting that property, with the one purpose in mind and in view to save that roll that I helped to make.

Mr. BLAIR: I object to this line of testimony, it is wholly immaterial, incompetent and irrelevant.

The WITNESS: I was shut off from giving it, they didn't ask me anything about it, and I want to give it as my reasons because I believe firmly, I may be wrong about that, that without something of this character is done all that work that we did will go for naught.

I also desire to offer this letter which I hold in my hand. Please mark it.

(Letter referred to marked Exhibit O.)

The WITNESS (continuing): It is a letter that you said you signed, I assume it came from you.

Mr. BLAIR: I object to it as incompetent, immaterial and irrelevant.

219 The WITNESS: I will offer it to show the good faith with which I acted. I acted under your advice, as I viewed it, the letter reads as follows: It appears on the letter head of "Charles A. Blair, Benjamin Williams. Law offices of Blair & Williams."



"JACKSON, MICHIGAN, November 18, 1902.

"Honorable A. F. Freeman, president State tax commission, Lansing, Michigan.

"MY DEAR MR. FREEMAN: On returning from the deer country of northern Michigan yesterday I found awaiting me your letter of the 14th inst. suggesting that I meet with your commission and the attorney general at Lansing on Tuesday or Wednesday, the 18th or 19th inst. I should be glad to have the advantage of such a meeting, but my neglect of my own business for the past two months has been so great that it seems imperative that I should now devote my undivided attention to it.

"I am fully in sympathy with your commission and shall back you up to the very fullest extent of my ability, and any conclusions which may be arrived at between your commission and the present legal department of the State will have my hearty support.

"Yours truly,

CHARLES A. BLAIR."

I had a conference with Mr. Oren, I cannot remember the date, but it lasted all one afternoon anyway.

Mr. BLAIR: This is all taken subject to my objection, it is incompetent, immaterial and irrelevant.

The WITNESS: When we got through with it he advised me, as appears in the opinion given to our board, and I asked him when he would put that opinion in writing, he hesitated somewhat and said "I will think about it, it is a great question." I asked him what he would do if he were a member of this commission in  
220 arriving at that average rate and the divisor so-called, as to adding to the assessed amount of the property of the State; it appeared that the assessed amount did not agree with the value of the property, and he said to me, "I would do what was right, Mr. Freeman." "What do you mean by that, that I have the right to add to that assessed amount what I or the board would deem to be the amount if it is beyond the assessed amount?" "Yes." I then renewed my request to give his opinion in writing to the board, and he said he would think about it; I received a copy of a memorandum of opinion said to have been written on a train and handed to Mr. Gullifer, and Mr. Gullifer handed it to me the next time I came to town, which was the next Monday or Tuesday after this conversation, as I recall it; Mr. Gullifer handed to me a copy of that memorandum and said it was a copy, and I believe it was because it was in harmony with the talk that Mr. Oren and I had had; Mr. Gullifer also carried that memorandum of opinion to the members of our board as soon as they were in session on Monday or Tuesday, we all knew of it at once, and we then gave up, that we would have to determine the amount with reference to the property of the State, and every one of us was pleased, that assisted us in working out what we called equal taxation; Mr. McLaughlin himself doubted the right to do

that, he thought that the rule fixed by the legislature was controlling, and while he said he thought the law ought to be that way, the law was not that way, in his judgment the equity of it was that way and it should be so, and with that statement to us he joined with the rest of us in arriving at the amount and worth of the properties of the State; I think that is all.

Mr. BUTTERFIELD: I understand it is conceded that that portion of Exhibit F attached to the bill of complaint from pages 1 to 16 inclusive, is a copy of the proceedings of the State board of equalization for the year 1901, and that if it is not in fact, then it may be corrected, but you waive proof of the actual authenticity of it.

Mr. BLAIR: Yes, sir.

221 IRA T. SAYRE, on the part of the complainant, testified as follows:

Direct examination by Mr. ANGELL:

I reside at Flushing, Genesee county. Am a member of the State board of tax commissioners, and have been since May, 1901. My associates during that period have been Messrs. Freeman, Dust, McLaughlin, Jenks and Kerr. Mr. Jenks retired about January 1, 1903, since which time Mr. Kerr has been a member.

Heard Mr. Freeman's testimony as to the general work of the tax commission, and understand that the testimony of all the commissioners on this subject was practically the same, and is correct as regards the general methods pursued by the commission and the general work accomplished. Was a member of the board when report to State board of equalization—Exhibit M—was prepared.

(By Mr. BLAIR: Same objection made in the case of Mr. Sayre as to similar questions in the examination of the other commissioners.)

Exhibit C is the report of the board for 1902, which was submitted to the legislature this past winter. That is one of the authorized copies of the report. It contains a report not only of the board of State tax commissioners but also of the same gentlemen sitting as a State board of assessors, so that in a general way it is a complete résumé of the work during the years 1901 and 1902.

Mr. ANGELL: If there has been any question about this, and I don't know whether there has or not, I have proven the accuracy of this book and I now offer it in evidence again.

Mr. BLAIR: We object to it as incompetent, irrelevant and immaterial.

222 Page 17 of Exhibit C says "It would be impossible to enumerate the questions raised and the matters discussed at these meetings"—referring to the meetings with the supervisors—"but with them all we emphasized the importance of listing all property subject to taxation and assessment of all at its cash  
10—397

value, endeavoring to point out that equal taxation and uniformity of assessment throughout the State can be accomplished in no other way; that while the old plan of assessing property at a percentage of its value prevails and each supervisor uses his own judgment of the percentage to be applied in his district, there is danger of as many different percentages as supervisors in a county, and the property of no two counties will be assessed by the same standard of value."

That statement is correct to the best of my judgment. Page 36 of this book says: "They rarely claimed that assessments of property had been made at cash value, as the law clearly and forcibly directs, but in fact admitted the prevalence of the plan of assessing property at a percentage of its value, one claiming a high percentage for his county and another admitting a lower and confessing unlawful assessments in this respect, attempted to justify by pointing to equally bad conditions in other counties." That statement is near the top of page 36, and was warranted by our experience. There would have to be an explanation as to that. If you take the ordinary supervisor and ask him if he is assessing at cash value, he will answer yes at once; if, then, you take the sales and go over them and the date we have collected with him, why, he will admit he is not assessing at cash value as we understand it, and that is true in I should say three-fourths of the cases that I have talked with the supervisor. I have talked to a number, not as many as the rest of the commission, because ordinarily when we hold meetings Mr. Freeman has been president of the commission, until recently, and he made the talks, and the remainder of the commission made no talks to the supervisor, and the questioning was done largely by him up to the first of January; we usually allowed the president of the commission to do that work.

223 Q. I will ask you now having paragraph 11, Exhibit E attached to the bill before you whether that is a fair statement of the facts in your judgment?

A. It is as we talked it over at the time, that answer was signed, yes sir.

Q. From your experience as a member of the board, taking into account all the information you had acquired in every way up to the time of making that answer, what would you say as to whether the undervaluation was common and ordinary throughout the State?

Mr. BLAIR: I object to that as incompetent, immaterial and irrelevant.

A. I should say it was quite general in varying degrees.

Q. What was your experience with reference to the matter of the intentional undervaluation, how far did you find that that existed?

A. Well, that exists only, I think, so far as the supervisors watch each other to see how low each can get his township so it will pass the board of equalization. I don't remember of but one instance where

the supervisors have got together in this State and made a practical agreement as to the manner of assessing property.

Q. You do recall one instance?

A. I recall one, and that was newspaper report, and then was brought to my attention by one of the supervisors of Lenawee county, and also by Senator Helme that the supervisors of Lenawee county.

Mr. BLAIR, interrupting: I object to that as incompetent.

Q. It came to your knowledge finally in that case?

A. I asked one of the supervisors in regard to it; that was simply personal property.

Q. If a supervisor tries to keep his township down as low as his neighbor, and that attempt is quite general through the State, it indicates, does it not, that generally through the State that the cash value is not being used as a basis of assessment?

224 Mr. BLAIR: I object to that as a mere conclusion and an inference, also it is incompetent.

A. That would be my judgment.

Q. That is your judgment, isn't it?

A. Yes sir.

Exhibit D which is a certificate attached to the first roll appearing on pages 69 and 70 of Exhibit C recites *that* the sum of seventeen hundred and fifteen millions, which said sum according to the information and knowledge of this board is the total true cash value of the property upon which said ad valorem taxes were assessed for the current year for said State, county, township, school and municipal purposes. The board determined that that figure (\$1,715,000,000) was the true cash value of the general property of the State. I concurred in that result.

The difference between the total of assessed valuation and the real value as fixed by the board was something in excess of 296 millions and some dollars.

Cross-examination by Mr. BLAIR:

We ordinarily had a general talk with the supervisors, and Mr. Freeman made that talk. The statements of under valuation were made both at the general reviews and at the spring meetings. At the time of the general reviews there was a stenographer; it was his duty to take down what was said.

His report ought to show exactly what was said at those meetings. In the first instance, the supervisors would usually claim that they were assessing at true cash value; but when you took the sales value as prepared by the field men, and the consideration verified and submitted that to them, I think three-quarters of them would  
225 admit that those sales, in a majority of instances, were a fair criterion of the cash value, and that they were not assessing at fair cash value.

If the sale value constituted the cash value of the property, they were not assessing at cash, as indicated by those particular sales that we examined. I presume one-quarter of them still maintain that they were assessing at cash value. Those figures are, however, relative. I did not charge my mind with it except in a general way.

Q. Now I suppose that in a considerable proportion of the instances where those admissions were made their counties were subsequently raised, weren't they?

A. Yes, sir, there have been a number—quite a number of them raised last year and this year.

Q. Where they had made those admissions in 1901 and 1900, since that time the valuations have been raised, haven't they?

A. Since 1900 and 1901?

Q. Yes sir.

A. Yes sir.

Q. In all cases so far as you know?

A. Do you mean in every county of the State?

Q. Where they made those admissions in 1900 and 1901?

A. Well, I haven't examined the records to see whether that is true or not, and I can not testify to it without the record.

Q. What do you think about it?

A. Well, the fact that the supervisors themselves this year have made a raise of forty millions would indicate that that was general throughout the State, that they were gradually coming to cash value or getting nearer to it.

Q. In the year 1902?

A. I think they raised over 1901 and 1902 gradually.

Q. To quite a large amount?

A. I can not say how much.

Q. That covered a proportion at least of the counties where the supervisors had made such admissions?

A. Those raises undoubtedly covered a portion of all the counties; some supervisors would raise and some would not.

226 Q. You made raises yourself?

A. Yes sir.

Q. That covered a proportion of those admissions that had been made?

A. In some counties, yes sir.

Q. Mr. Freeman has said and has fixed the number at at least five hundred. You have raised somewhere in the neighborhood of ten counties, haven't you—nine counties any way?

A. I could not tell that without going to the record.

Q. And isn't it a fact that wherever the supervisors in a county where you had a general meeting made admissions that their counties were undervalued that you undertook to raise those counties as soon as you could get to them?

A. Up to last year we attempted I think to take the counties we thought were in the worst condition, or up to this year and this year

we have taken the counties—we are trying to take the southern counties of the State, the larger counties and also our own counties, the counties in which the commissioners live.

Q. Then up to 1903 you had undertaken to take the worst counties of the State?

A. In the lower peninsula; I think the counties we covered either the assessments of the townships were bad or some city, and those were the ones we took.

Q. And that as you say was in the case of a county where they were the worst?

A. Yes sir.

Q. And the lowest county?

A. Yes sir; I think that is true. Kalamazoo, Jackson and Saginaw were bad, they were among the counties.

There are some parts of Genesee I think are assessed 90 per cent. or higher. The city of Flint, our examination showed, is in a pretty bad shape on account of their having left large pieces of property off the rolls entirely. This is indicated by our examination of this year. Mr. Dust admitted that this county was 85 per cent., and he is more familiar with it than I. I think the county, taken as a whole, is assessed somewhere between 85 and 90 per cent.

The board held a special review in 1901 in Alpena county.

Could not tell if they added \$597,207 to the roll. We held a review in a portion of Antrim county, a review in Bay county in 1901, in Benzie county, at Frankfort, a special review, and special reviews in Branch, Charlevoix, Cheboygan, Chippewa, Emmet, Ingham, Kent, those were all specials.

Lenawee, Manistee, Ottawa, St. Clair, Tuscola, Wayne, Alger, Allegan, Calhoun, Charlevoix, Houghton, Harbor Springs, Petoskey, Mackinac Island, Jackson, Kalamazoo;

Mackinac, Macomb, Marquette, Oakland. There were but a few general reviews. Oakland county was special; there was perhaps a review in Ottawa; in St. Clair we reviewed the city of Port Huron. A general review was held in Saginaw; special review in Washtenaw, general review in Jackson. At a general review the property was placed at its cash value.

Exhibit C, report of the tax commission and State board of assessors for 1902, says that during the year 1902 (page 22) general reviews have been held in some portions of all of the following counties: Bay, Charlevoix, Jackson, Kalamazoo, Kent, Mackinac, Macomb, Saginaw and St. Clair, and that is true.

I think the reviews in Barry, Calhoun, Cass, Charlevoix, Clinton, Jackson, Kalamazoo, Lapeer, Livingston, Macomb, Montcalm, Shiawassee and St. Clair were probably special.

There was a general increase in the value of property after 1900, after we got the reports from the registers of deeds. Some large sugar plants and some cement plants were erected and street-railway properties were extended, and there was quite a considerable addition to the property of the State generally, which would account



to some extent for a portion of the increase in values up to 1902. There was some property that went out of existence which might tend to diminish that.

In my affidavit attached to the bill of complaint I meant four-fifths of those that made statements to me. A portion of the  
228 affidavit read to witness as follows: "Deponent further says that he has been present at the examination of a large number of assessing officers of said State when said assessing officers have been interrogated as to their method of arriving at the assessed valuation of the property in their respective districts and that at least four-fifths of said assessing officers have stated that they have uniformly and intentionally assessed property in their respective districts at a certain percentage of its true cash value."

The four-fifths is my judgment of the number with whom I talked, not four-fifths of the assessing officers of the State. I presume that I have talked with probably about 100 or 150, and if it were 100, I should say I heard about 80 of them, and if it were 150, about 120, express the opinion the way I have already described,—saying at first that they did assess at true cash value; even the supervisor in my own township claimed that he had assessed at true cash value. I did not protest that he had assessed me too high. I might have protested that he assessed me too high in proportion to some of my neighbors.

George Pennoyer was supervisor of Flushing. I protested against his assessment for the reason that he had left all the watches and jewelry of the township off the roll. There is no question but that I made a protest to him about the assessment of my own property. It was not that my assessment was too high.

Made the affidavit attached to the bill of complaint on the 10th of June, 1903, at the request of Mr. Butterfield in the St. Clair hotel on the 9th or 10th of June, made it and signed it at the time it was presented to me, subsequently got it back, after Mr. Dust refused to make one. Think Mr. McLaughlin also refused to make one.

I got it back to consult with Senator Atwood about it. I had to leave on the morning train to attend Judge Durand's funeral, at the request of the family, and I told Senator Atwood to take the affidavit and think the matter over and let me know what he thought  
about it. When I returned from the funeral to the hotel I  
229 received a telegram from him stating that in his opinion the affidavit was all right, that was on Thursday, and I kept it until Friday morning before I delivered it.

When Mr. Dust and Mr. McLaughlin refused to sign the affidavit I thought there was some reason why I should consult somebody about it. I thought it was loaded; and in a way it was. I think that any taxpayer in this State is entitled to the knowledge of this office. I made that affidavit under those circumstances for that purpose. I did not understand that it committed me to the things the railroad companies would have to show to set aside the excess

of their assessment over what it should have been if the supervisors had honestly assessed.

I had already sworn to those facts in the bill of complaint prepared in the attorney general's office. The facts in the affidavit are copied from the answer in the board of education suit. That answer contained nothing about four-fifths.

(Section 11 of the answer read by witness.) The language is not the same, but practically the same statement is in the affidavit. The data referred to is somewhere in the office; there is a stenographer's record. If the stenographer's record shows that there were only two who admitted under-valuation, why there would be simply two and no more, if they admitted it in his presence, of course.

The 82.7 per cent. would be the percentage derived from dividing 1,438 millions by 1715 millions. I did not understand that there was any certainty about the 1715 millions; that was the best estimate that the board could make, some of the members being above and some below. No certain way that any man could figure out to the others that he was right and the others wrong.

"Q. You don't say anything in you affidavit with reference to the fact that you had raised valuations in parts of those counties, where the supervisors had made those statements?"

"A. The affidavit speaks for itself.

Q. Why didn't you, if you wanted to be fair towards the State, give the State the benefit of those statements that were in your knowledge?

A. If you had asked me for an affidavit to that effect I would probably have given it to you.

Q. Did you think I would be likely to come to you for an affidavit after you gave one to the Michigan Central?

A. No sir; by some things you said I should judge you would not. I signed the affidavit because I think the statements in it, so far as the percentages are concerned, are true, and because it could only be used for the purpose of obtaining a temporary injunction. If I were to do this over again, the affidavit would not be presented to me, and if it were presented, I would not make it. Although I believe the statements are as true as on the day that I signed it.

(Objection by Mr. Angell, to further examination of this character.)

It did not attract my attention that Dust and McLaughlin had refused to make it. I had turned it in and did not pay any further attention to the matter after I had talked with Senator Atwood.

Mr. Butterfield told me that he had affidavits prepared for all of the commissioners, and I understood that they were all to sign them. I do not think that I have been friendly towards the railroad corporations. I want them to pay the same rate of taxes that I do.

Redirect examination:

I protested against the assessment roll in our township in 1901, alleging the supervisor had discriminated against the village and in

favor of the county. I reside in the village, but my property was largely in the county.

I showed to the supervisor that he was assessing my farm that I bought from him at practically what I paid for it, and he was not assessing other farms in the same proportion. The reason that I filed that protest was purely political.

231 SAMUEL S. BIBBINS, sworn on behalf of complainant, testified as follows:

Direct examination by Mr. BUTTERFIELD:

I reside in Ypsilanti, Michigan. Aged 50. Am a farmer. Held the office of township treasurer four years; commissioner of highways a short time, and supervisor for seven or eight years; am at present employed by State tax commission as a field examiner.

I have been employed by the commission continuously since April, 1901, with the exception of a week. Assisted the tax commission in preparation of report to State board of equalization in 1901, contained in Exhibit M. Prior to August 1901, I visited four or five counties.

I commenced in the county of Berrien. From there went to Cass county, St. Joseph, Branch, Hillsdale and Saginaw. My work as field examiner continued after the meeting of the board of equalization. In the work prior to August 1901, we visited the counties and undertook to arrive at the valuation of the properties. Our starting point was mainly from sales furnished from the office and our attempt was to verify the sales.

What I mean by verifying the sales is to visit either one or the other of the contracting parties and ascertain whether the consideration was the actual price or not. And to ascertain from them whether they thought they had paid more than they thought it was worth, and as nearly as possible to ascertain the conditions generally under which they bought the property. We also examined properties which we called specials or pickups and arrived at an estimate of the value of those properties from information we received upon inquiry, exercising our own judgment as to their value. This method has not been amended particularly up to the present time, except that we are trying to make it more complete by visiting every section.

232 I visited every section in every township and got at least one description of realty from every section. The difference in work in 1901 and the present time being that with reference to our specials or pickups, we distribute the property examined all over the township, make it a point to visit each section, while in our examinations in 1901, we were not so careful to get those descriptions upon every section of a township. In 1902 I examined three townships in Clinton county, and ten or eleven townships in Calhoun county.

The three townships in Clinton county were De Witt, Bath and Victor.

Witness shown reports of field examiner for townships Bath, Victor and De Witt, Clinton county, same marked Exhibits O, P and Q, and identified by witness.

Mr. BUTTERFIELD: It is dated May 23, 1903.

(Objection by Mr. Blair, to any evidence in reference to reports.)

The examination was made approximately on May 23rd.

There is a column on Exhibit O, P and Q purporting to be the assessed value of 1902; we made no use of any assessed valuation for the year 1903.

(Under objection, by Mr. Blair, of incompetent, immaterial and irrelevant.) That it was all done after the average rate was fixed and after the assessment had been made and the testimony of these men at all events, except as it has been acted upon by the board of tax commissioners, is absolutely hearsay.)

Witness stated, I don't think I made any computations of the percentage to true value in these townships. That work has been done in the office.

From Exhibit O it appears that in the township of Victor there were 36 specials examined and 21 sales—total 57.

(Mr. BLAIR: We object to all that as incompetent, irrelevant and immaterial, and we object to all the evidence of this character given by field men with reference to examinations made in 1903, or the results of his work in 1903.)

233 The summaries upon the report marked Exhibit O are not my figures.

The assessed value of the sold property is \$34,550; verified consideration, \$47,413, and estimated value \$48,208. Of the other properties examined the estimated value is \$151,150, and the assessed value \$105,100.

On Exhibit P (township of Bath) the assessed value of the sales property is \$23,860; verified consideration, \$30,425; estimated value, \$36,725; the assessed value of the pickups is \$70,060; estimated value, \$94,950.

On Exhibit Q (township of De Witt) the assessed value of the sales property is \$43,940; verified consideration, \$66,640; estimated value, \$66,190; the pickups, assessed value, \$100,530; estimated value \$141,700.

(Under objection by Mr. Blair of incompetent, immaterial and irrelevant.) In my judgment I found the townships of Victor, Bath and De Witt to be assessed at less than the true cash value.

Exhibits O, P and Q offered in evidence.

(Subject to objection, by Mr. Blair, of incompetent, immaterial and irrelevant, and hearsay.)

The paper, entitled "Report of Calhoun county, 1902, verified sales, estimated properties, etc., Bibbins and Stone," marked Exhibit R, is the report of our examination of properties in Calhoun county, in which I examined 11 or 12 townships.

There are two or three townships that I didn't write, some of it is in Mr. Stone's and some Mrs. Stone's handwriting.

As I remember, I examined the townships of Athens, Battle Creek, Bedford, Clarence, Clarendon, Eckford, Lee, Le Roy, Marengo, Sheridan and Tekonsha.

Witness asked to refer to report for those townships and state the assessed value and the true value, which he does as follows :

234

## Calhoun County.

Township.	Sales.			Pickups.		
	No. Ex.	Assessed value.	Verified consid.	No. Ex.	Assessed value.	Fieldman's value.
Athens.....	20	\$32,100	\$37,675	36	\$122,700	\$150,900
Athens village.....				6		
Battle Creek.....	3	3,775	4,750	38	132,050	162,450
Bedford.....	13	15,400	21,150	35	89,300	111,050
Clarence.....	8	8,120	12,250	36	59,025	89,075
Clarendon.....	9	12,380	18,040	36	74,470	100,550
Eckford.....	9	22,350	24,420	36	129,700	145,350
Lee.....	5	3,700	6,400	36	58,750	87,100
Le Roy.....	15	26,000	27,715	36	97,450	125,800
Marengo.....	5	14,000	16,380	37	141,550	163,300
Sheridan.....	12	19,600	22,825	34	113,100	133,050
Tekonsha.....	13	15,350	22,375	36	77,960	111,950

At our review I examined the sheet Exhibit J and helped to make up those figures in the sense of recording them here. I am satisfied that they are correct and represent my work in Calhoun county.

The third column, entitled "Per cent. of real estate examined," means percentage of values of properties in the township actually examined.

Offer of Exhibit J in evidence renewed.

(Objected to by Mr. Blair as incompetent, immaterial and irrelevant.)

Thinks Exhibit K represents the result of work in Clinton county.

Offer of Exhibit K in evidence.

(Same objection, by Mr. Blair.)

Examined two townships in Oakland county that were not acted upon by the commission in general review until 1903—Grove and Springfield. The figures reached in those townships are :

233

## Oakland County.

Township.	Sale.				Pickups.		
	No. Ex.	Assessed value.	Verified con.	Fieldman's value.	No. Ex.	Assessed value.	Fieldman's value.
Groveland . . . .	8	\$12,550	\$14,800	.....	36	\$83,250	\$95,250
Springfield. ....	9	10,500	11,100	\$11,500	36	73,700	84,250

I aim to examine one parcel on each section. So far as the properties I have examined are concerned, I found that they were assessed at less than true cash value. I undertook to satisfy myself that the property I examined was a fair criterion of what was being done with respect to the other property in the township.

I saw the supervisor in each of those townships.

(Under objection, by Mr. Blair, as incompetent, immaterial and irrelevant.) I conversed with him relative to the value of his properties and got all the information I could from him, both as to the value of his township in general and the value of the properties I had examined or was about to examine. In some instances, I did not see the supervisor until after I had made the examination. In some instances I communicated to him the result of my examination and some not.

(Under objection of incompetent, immaterial and irrelevant and hearsay, by Mr. Blair.) Where I did communicate the result, he usually claimed that I had rated the properties higher than they were worth.

I do not recall any case of any assessor admitting that he was putting his properties down to what he believed to be some percentage of the true cash value less than 100—there may have been a case of that kind. I was assessing officer in the township of Augusta seven years continuously, with the exception of one, 1894 up to 1900. Since 1900 have been traveling quite extensively over the State working for the tax commission with reference to 236 taxation and giving attention particularly to the question whether the property was being assessed at its true cash value.

(Under objection, by Mr. Blair, as incompetent, immaterial and irrelevant and improper direct examination and leading.) From the counties in which I have done work, I think it is true, as far as my best judgment is concerned, that the assessing officers assess property less than its cash value.

Exhibit R, Calhoun county, offered in evidence.

(Objected to, by Mr. Blair, as incompetent, immaterial and irrelevant.)



## Cross-examination by Mr. TOWNSEND :

I worked with Mr. Stone in Calhoun county ; he or his wife wrote up two or three townships, and aside from that, I wrote up the report.

I took the figures he gave me as representing his work in the townships he worked. We worked the county of Kalamazoo together, and I made out the entire report for all of our work in that county, taking his figures. Never did any of the computing percentages, etc. The clerks in the office did that.

I met most of the supervisors of the townships where I did my work. They were men that fairly represented their people. In a general way, I should say that I did not meet any of these men who I think were intentionally dishonest in their work, meaning that they were intentionally misrepresenting values. I was not acquainted with any of the localities in which I did work, previous to going into them as a field examiner. Did not examine property that I was acquainted with.

(Under objection, by Mr. Angell, as immaterial and irrelevant.) I think that a stranger acquainted with values in a general sense was perfectly competent to make assessments upon the values of those properties and perhaps fully as much so as any party  
237 who was there, for the reason that in my opinion, in many instances, they were inclined to be conservative on estimates of actual value.

I attempted to get an average piece of the property as nearly as I could. Some of the properties examined were good and some were not so good. On this list there is property that I consider considerably poor on section 10.

Witness evidently shown paper subsequently marked Exhibit S. It is described as "rolling and hilly, no waste land, about five acres of wood lot." I made that \$1,400. What I mean by that is, it is not up to some other properties of the same size.

The first one of section 1 shows "good farm, not in the best condition, about four acres of marsh, about 14 acres of wood timber."

The next one "about 50 acres river flat land, balance very good. About 10 acres of wood timber, about 10 acres of bush lot."

The next one "about 15 acres of river flats, some wood timber, and the last one, very fine farm, but very little waste land, some wood timber."

If I made out report of the actual sales and of the pickups, the percentages on each would be different.

Though they came approximately close, from 3 to 8 per cent., or somewhere along there. It never varied as much as 20 per cent. Final percentage was computed in office. I think they took the aggregate and divided the assessed value by the actual value to produce the percentage. If there had been more sales, the rate would have been different, if the per cent. was very much different as to the pickups and the sales. Though I suppose the same relation

would have existed, at least approximately. If we had examined 10 sales instead of 9, the result would have been approximately the same, though there might have been some slight difference. It might be possible that it would be widely different, but that would not be a usual case.

Where we found an unusual condition of things and the purchaser paid more or less than we estimated the property worth, the value was fixed upon our judgment. If unusual conditions existed, 238 it affected the percentage, but we looked into these conditions to the best of our ability, and sales that did not represent values in our judgment, we eliminated. That is, where we found a sale from father to son or where there were gifts in connection with the sale, we didn't use it.

The properties which changed hands most frequently would be the lesser valued properties. It is true that there are trading properties in every community that usually change hands in trade, but when we understood that there was a trade in connection with a sale, we disregarded it as a rule.

Attention of witness called to Exhibit R (Calhoun county). Mr. Stone did the work in Albion. According to the exhibit there were 3 sales verified in that township and 32 pieces examined. It possibly might have been true that if we had examined two pieces on a section, we would have been likely to get a more nearly correct value than by examining less. Examining one average piece of property was a way of getting at the work of the supervisors in our judgment.

We seldom found the four quarters of a section alike. It would be quite likely to be very much different as to quality of soil, buildings and value of the farm in general, and if after examining one quarter we had found another quarter upon the same section assessed fully up to value or exceeding it, it might have affected the percentage. It would be an unusual case, as we made inquiries in regard to the property, that we did not take, and a great many times compared it with the property that we did take, and attempted to get an average value of the property. In some instances we looked at the other pieces on the assessment roll. In a general way we looked up more pieces of property, that is the assessments, than we took as pickups.

But did not look at anywhere near a majority of the land with reference to placing a value upon it. Some of the sections were divided up into a great many holdings and we examined a 239 very small percentage of the holdings. I am quite certain our examinations would not cover one-fourth of the area in a section.

Though in some instances it covers more, where we took 260 or 300 acres in a description. In Calhoun county, examined by Mr. Stone and myself, the acreage of the pieces examined in the township of Athens runs from 25 to 240 acres. There being 20 parcels of less, and 15 of more, than 100.

This would average far below a quarter of a section.

We devoted on an average of 3 to 4 days in the examination of a township. In a general way, we took time enough to satisfy ourselves that we were approximately correct in reference to the conditions of the soil, taking into account its location, and the value of the buildings and the proximity to market. We examined fully 12 pieces in a day. Put into the work perhaps 10 or 12 hours a day and perhaps not so many. All of the time was not spent on the road or in the township examining pieces. We spent some time with the supervisor also. Three days and a half would cover the time we spent in examining the land, obtaining information in regard to it, talking to the supervisor.

In the third column of Exhibit N (summary of Calhoun county, 1902), marked "Per cent. of assessed value to verified consideration," the per cent. 90.6 has reference to the sales and means that 90.6 is per cent. the assessed value as compared to the verified value of the sales. In the ninth column, the per cent. 85.3 refers to the combined value of the sales and pickups, being an average per cent. of the whole property examined.

The sixth column, entitled "Per cent. of assessed value to actual value," is the per cent. of the assessed value of the properties examined to their actual value. This is given as 84.8. The difference in per cent. is the result of the method I have stated, I suppose. The per cent. might vary somewhat with the method and depend upon the number of pieces sold and examined, and the judgment of the man making the estimate.

240 Think percentage might vary 6 per cent. but the percentages, according to the different methods, have been close. A more extensive examination would have been more liable to give a more accurate result. In my opinion, the more properties examined in a given district, would give a more accurate condition of values in that district, and I think if we had had time to examine all the pieces in a township, we could have been more accurate than by examining only a portion.

I don't know that I could get the actual cash value of the property of a township by the method used and don't know that I could get it by an examination of all the properties, because our judgment is human and it may not possibly have been the actual value after all the examination. It finally comes back to a question of judgment and our judgment is based upon the value of a few pieces and sales reported and such other information as we could get by inquiry, so as to determine the value of the township.

The report of Calhoun county is in my handwriting. I signed my own name and Mr. Stone's too. It was by his permission and authority.

If in examining 36 pieces of property in a township, estimated value is found to be \$150,000 and the assessed value \$100,000, or 66 $\frac{2}{3}$  per cent. of the true value, if in that same township a piece worth 50 or 60 thousand dollars assessed at 90 or 95 per cent. was taken as one of the 36 pieces, it would make a great difference in the

percentage resulting from the examination. The same thing holds true of any piece of property in a township of greater value than the pieces estimated.

It is possible that those things may enter into and impair the results found.

The county of Clinton was reviewed in 1903. From my actual knowledge, I cannot say that I have ever discovered any concert of action upon the part of the supervisors to work together upon some plan to assess at under cash value. I might answer differently on hearsay and common report.

241 I cannot recall the name of any supervisor or supervisors who were not assessing property as they honestly thought or claimed to think, was at the proper value.

#### Redirect examination :

Did not report to the tax commission what I learned by hearsay and common report in the communities visited.

I may have written something about general condition of the properties in a township—my report will show anything that I did write.

(Under objection, by Mr. Blair, of immaterial and irrelevant.) I think in some localities I got the impression from my investigations that the supervisor of a township was using substantially a uniform rule and treating his constituents all alike. I formed an impression from what I had learned in the locality or township as to whether the parcels examined and reported upon, represented a fair average of the condition of the entire township.

(Under objection, by Mr. Blair, as immaterial.) Do not recollect any instance where supervisor has acknowledged he was making use of any particular percentage, but in some instances I am quite sure that some have acknowledged that their values might be less than actual value. They claimed they were treating everybody alike.

(Under objection, by Mr. Blair, of immaterial and irrelevant.) They claimed that they were assessing the parties, all properties equal and without any discrimination, favor or punishment, or anything of that kind, and were intending to use all their people alike.

#### Recross-examination :

Exhibit S, being field examiners' report for townships of Groveland and Springfield, Oakland county, shown to witness.

242 "Q. I \* \* \* ask you if you will take any two of those pieces of property there—take two consecutive pieces—that will be the better way, and see if when you look at the assessment of those properties, it is true that the supervisor under-assessed those properties at the same rate—any two of them?

"A. Well, from my findings, the per cent. of assessed as to actual value does not seem to be the same.

"Q. There are no two alike upon the page?"

"A. So far as the actual per cent. of difference is concerned, I think not.

"Q. So if they are under-assessed, every piece differed in its rate of under-assessment from every other piece, according to your finding there, is that true?"

"A. It seems so from the report here; that does not change the claim, however, of the supervisor.

"Q. It does answer the question that he is assessing them all at the same rate?"

"A. Well the same rate per cent. of value.

"Q. Of under-valuation?"

"A. Well no, I don't think it does. I don't think that according to my report that he is assessing in this instance at the same rate per cent. of under-valuation in each individual piece, it would not seem so to me."

243 A. H. ROLPH, sworn on behalf of complainant.

Direct examination by Mr. BUTTERFIELD:

I have resided at Escanaba, Delta county, 21 years. Was with Ford River Lumber Company two years; was employed by tax commission in June 1902, as field examiner. Never had any experience in the valuation of real property.

Never had any special experience which would fit me particularly for the work with the tax commission.

My first work was in Menominee in 1902 with Mr. Davidson, taking the data in regard to transfers from the records, after which we verified the sales and visited the various properties to ascertain if there had been any buildings erected, or whether the timber had been cut from the lands since the sales. Where we found the timber had been cut, we placed the then actual value of the property upon it as near as we could arrive at it.

(Mr. TOWNSEND: I make the same objection to the testimony of this man as to what he did in connection with this work as incompetent and immaterial, and I would like to have it understood as applying to all the testimony of this man of this character.)

During the year 1902 I also worked in Delta county; the work being of the same general character as that in Menominee.

I have before me a report of that work.

Witness asked to state from the report the number of parcels examined, including sales and pickups, the aggregate consideration, true value as found and the assessed value, following with the percentage of assessed to true value. Percentage given by witness from Exhibit T.

(Mr. TOWNSEND: We object to any testimony being taken upon this subject by this witness.)

Witness answers:

244

## Delta County.

Townships.	Sales.				Pickups.			
	No. Ex.	As'd val.	Verif. con.	F. man's val.	No. Ex.	As'd val.	F. man's val.	Per cent.
Baldwin.....	13	\$4,950	\$7,937	Same...	11	\$6,350	\$10,750	60.5
Bark River....	12	2,225	4,435	" .....	4	18,805	60,400	50.2
Bay de Noc....	8	2,905	5,905	" .....	15	8,000	12,940	60.4
Escanaba.....	15	10,210	21,523	" .....	10	8,600	15,050	
Fairbanks....	2	1,625	1,900	" .....	00			85.5
Ford River....	11	4,260	7,421	" .....	26	13,330	27,000	51.1
Garden.....	4	28,050	34,000	" .....	18			83.8
Maple Ridge...	7	2,690	5,275	" .....	00			51.
Masonville....	6	2,345	4,070	" .....	00			57.6
Nahma.....	6	1,950	8,290	" .....	2	20,140	81,600	24.6
Sac Bay.....	1	350	700	" .....	00			50.
Wells.....	14		8,385	" .....	16	23,390	41,085	56.9
Escanaba C'y..	130	114,928	184,254	" .....	84	262,940	418,750	62.4
Gladstone C'y..	38	27,945	38,868	" .....	17	10,590	13,215	72.2

(Mr. TOWNSEND: We want to object to the witness testifying from the sheet—Exhibit T—according to his own evidence he knows nothing about it and it is incompetent and immaterial.)

In speaking of pickups, I mean that we selected one or two descriptions in each section of land we visited and ascertained as nearly as possible their actual value. We placed an estimate upon the land and the buildings separately and in that manner arrived at what we termed the actual value of the property.

In selecting the pickups we did not select a description upon each section. In the township of Bark River, which is twelve miles in length, we took pickups in each part of the township but not on every section.

We took all the sales that had been recorded for a year in every case where there was a trade or where personal property was included in the sale, or where it was between members of the same family, we did not consider it. We eliminated everything except the *bona fide* cash sales.

In Delta Mr. Davidson and I worked jointly in a part of the territory and independently in a part. The report which I made  
245 is correct as near as we could possibly ascertain the value of the properties.

It must have been completed about the first of September, 1902.

Supervisors themselves had raised the valuation of Delta county something over \$900,000 over last year's assessment and the tax commission made some further addition.



## Cross-examination by Mr. TOWNSEND :

I first worked for the tax commission in 1901 and was sent into Chippewa, Menominee, Luce and Alger counties until in August. It was a hurried examination to get some information for the board to act upon at the time the State board of equalization met.

The tax commission sent out transcripts of the records of sales. We examined those properties, the nature of the sale, quality of the timber, and ascertained as near as possible the actual value of the properties in the several townships and counties.

I was recommended for appointment by Senator Fuller and hired on his recommendation. I put in three months in 1901.

When I went into Delta county I knew there had been a review there and that considerable property had been added to the roll. I knew nothing of my own knowledge of the figures on the sheet marked Exhibit T or about the percentage there shown and never figured any of the percentages.

The board of tax commissioners has never raised the townships that I examined the per cent. that I found they were under-valued. I found that the assessors put one value on the property, the board of supervisors another, and I still another, all differing.

(Under objection of Mr. Angell as incompetent.) If they had sent Stone or Bibbins or any of the other men up there, they  
246 might have found a still different value. I haven't any question but what you might send a dozen men in there and they might look at the same property and their judgment might differ as to the value of the properties. I don't doubt that you and I can look at a piece of property and your judgment might be one thing and mine another. It is always a matter of judgment. The sheets from which I have been testifying were made by Mr. Davidson.

Mr. Davidson did the writing and after he had made a copy we compared it with the slips from which it was taken. You could not determine the value of the township of Sac Bay by examining one piece of land, as was done. Think it would not be a very reliable guide for fixing the value of that township. I don't think that four pieces is a safe guide to go by in fixing the value of a township.

I don't think that the examination of two pieces in the township of Fairbanks would be a fair guide. And you can't get an exact valuation of a township by examining any considerable number of pieces less than the whole. There might have been some of the pieces not examined assessed at value or more. We examined both resident and non-resident pieces, but found no difference in the assessment between resident and non-resident lands. The supervisor treated them about alike. If we could have found and examined pieces that were over assessed, it would have made a difference in the final result. The work which has been done by the supervisors since, has indicated that some of the property was assessed at more than its value.

I don't think that the examination of 4-10 of the value of a township, as was done in Masonville, Delta county, is a fair way of determining the value of all the property of the township. To a certain extent it would be a guide. Masonville was the most valuable township in the county. The valuation is made up very largely of one or two large properties. We examined the large pieces but did not include them in the report for the reason that we were not able to determine their value, and don't know whether they were assessed at their value or more. There was one piece assessed at \$180,000.

The only information that we got in regard to this was that 247 the book value was \$262,000. If it should turn out that the \$180,000 property was assessed at value it would wipe out the \$4,000 worth of property examined and raise the per cent. of the township very materially. We didn't attempt by our examination to determine the value of the property of the entire township. We determined the value of what property we could and the percentages were figured here, and what they showed we knew nothing about.

The object of our work, however, was for the purpose of getting at the value of the property of the township.

I think the examination in Baldwin township, Delta county, of 4.9 per cent. of the property would be safer in that district than any other we examined, because the supervisor had gone over every description of land and made estimates of the timber and placed the actual value of them in his assessment. We did not entirely rely on what the township officers did, but did to some extent. It would be impossible to examine every piece and rely entirely upon our own examination.

I would not consider that the examination of 4.9 per cent. of all the property in Baldwin township was a safe guide. I do not think that the examination of 20.3 per cent. of the property in Bark River would determine the actual valuation of that township, nor would the examination of 13.5 per cent. in the township of Bay de Noc. The same answer would apply in each case. The only way you can determine the value of the properties in a township is to have men go on and make an examination of each description. The percentage of property examined in Delta county is: Garden, 8. of 1 per cent.; Bark river, 20.3; Escanaba, 15.7; Nahma, 15.4; Bay de Noc, 13.5; Wells, 11.9; Ford River, 11.6; aside from this the rest of the townships are below 10 per cent. and one of them as low as .4 of one per cent.

I worked entirely alone in the townships of Bark River and Bay de Noc. I made the report in part of Escanaba City, part of Gladstone City, Baldwin, Bark River, part of Escanaba township, Ford River, Wells and Bay de Noc townships.

248 These reports are in my writing. Some of the information was gathered by Mr. Davidson and I wrote it down. We compared them afterwards.

In some instances I valued the lands and buildings separately.

Have had some experience in building. Mr. Davidson and I would differ upon the value to be fixed. Where we could not possibly agree upon a valuation, we would try and find some party who was conversant with values and get his opinion upon these points. I do not know that there were any times that it was not possible for us finally to get together. I don't think we ever varied two hundred dollars upon a property except in the city of Escanaba.

I was acquainted with the property there and he was not. I considered from the fact that I was acquainted with the property, that I was better able to judge of it than he. A stranger to a locality is not as good a man to judge of the value of property as a man who is acquainted with it and has a general knowledge of values. About 1871 I was engaged with an architect for five years.

I kept his books and looked after his outside business generally. I was secretary of the building department of Chicago for three years. This was office work, comprehending the examination of plans to determine whether they complied with the building ordinances.

My experience with the Ford River Lumber Company was as bookkeeper but I worked in a lumber yard before entering the army and the first summer after, I inspected lumber on the Chicago river, being less than twenty years old at the time. Have never worked in the lumber woods nor scaled any logs. Never lived on a farm to any extent.

Never estimated the value of any timber tract and never had any experience in estimating such values and don't feel myself competent to do that.

The lands of the counties which I examined were formerly timber lands. There is some scattering pine left in those counties.  
249 The lands where there was hardwood and cedar, ten years ago were considered practically worthless, but today are very valuable properties.

In verifying considerations, I went to the parties to the transaction, told them the purpose for obtaining the information, and verified the sale in that way. The consideration in the deed would always be the proper consideration. I never had any reason to suppose that the party asked about the transaction, was not telling me the truth about the consideration and never found it necessary to ask anybody else.

What was told me by one of the parties to the transaction, I took for the truth. And there were no exceptions to this as I remember. That is the reason that my verified considerations correspond exactly with the true value.

Where extraordinary conditions existed, we investigated those from other sources, as the neighbors or parties conversant with the deal. We talked to the supervisor and ascertained from him what the property was assessed at and what he knew of sales, and very often asked him if he knew the values of the properties and in many cases he did. They were willing to help us usually. *They agreed*

*that the properties sold for the price named in the deeds but would contend that the parties had paid more than the property was worth; that was the universal contention of the supervisors. They believed that the property sold for more than it was worth.*

This was not confined to timber lands. If it were timber lands, I could not tell if it was sold for more or less than it was worth, not being familiar with them, and so far as my personal knowledge went, it might have been sold for more than it was worth and the supervisor may have been right about that.

There were not very many instances of eliminating a sale. One or two, but not a great many. And where personal property was included and it was impossible to get at the selling price of the real estate, we eliminated it entirely.

"Q. Did you meet any of the supervisors?

A. Yes, sir.

250 Q. Nearly all of them?

A. Yes, sir.

Q. How did they compare with the rest of the men in the community as to ability and fairness and intelligence?

A. I think, as a rule, the supervisors in the counties in which I have worked are intelligent men, men of very good judgment, and men who, if they wished to or if they had the time to make a thorough examination of all the townships, would assess them at pretty nearly their cash values, but, as I stated before, there are townships that are composed of from four to six or eight, and in one case, of sixteen surveyed towns, it is in a wild country, very few roads, simply an old logging road that was made at the time the pine was taken from the land and grown up with brush since that time, and it is impossible for a supervisor to get onto every description in his township to ascertain its actual or anywhere near its actual value.

Q. If they could do that or had time to do it, you think they would give a good, fair assessment?

A. I do.

Q. You think they are honest men with good, honest intentions?

A. Yes, sir; I have only met one or two that I had reason to suppose were trying to evade their duty in the matter at all.

Q. You think the rest were honest men, trying to do their duty?

A. Yes, sir.

Q. From the fact they lived in the community, if they had the time and it would have been possible, they would have made a fair assessment?

A. I don't doubt it, sir.

Q. Didn't they have as much time and wasn't it as possible for them to get at the value as it was for the field men that went up there?

A. No, sir; you take a man with four to six townships and he has got thirty days to make his assessment; all he can do is to copy his roll unless the township authorized him to go and employ a man to

examine the properties. I know one instance in one township where property in former years had been assessed at \$150, last year it was assessed at one thousand. Other property in that same township that had been assessed at two or three hundred dollars, was assessed as high as eighteen hundred dollars, and in the same town there were other properties that had been assessed at four hundred dollars that were reduced to one hundred dollars.

251 Q. Do you mean to say that anyone of the field men ever had thirty days to put into a township—did you put in thirty days in any township?

A. No, sir; and we didn't have any assessment roll—

Q. (Interrupting.) Did you put in ten days?

— No, sir.

Q. Did you put in to exceed three or three and a half in any township?

A. Three and a half or four days usually.

Q. And lots of those places you could not get through on account of the wet weather and the lack of rubber boots?

A. No, sir; I can take you into townships I don't think you could walk through in six months.

Q. So I say his opportunities weren't any better than the resident supervisors for determining the value, or as good?

A. I presume not; no, sir.

Q. As the supervisor living in that township I mean?

A. Yes, sir.

Q. And in a great many instances I suppose he had been supervisor for a number of years, according to your statement?

A. Yes, sir; some of them have been."

(Mr. TOWNSEND: I desire to move to strike out all the evidence of this witness which is based upon the reports which he did not make himself.

Secondly, I move to strike out all the evidence based upon the reports which he did make in part, for the reason that he cannot separate what he made from what his fellow workman, Davidson, had made.)

#### Re-direct examination:

The commission held a general review in Menominee county in the spring of 1903. Mr. Davidson and I worked together in Menominee city.

I worked in Charlevoix county this summer, in all respects in practically the same manner as the previous work.

(Mr. TOWNSEND: I object to this testimony on the ground that it is incompetent and immaterial and subsequent to the fixing of the rate.)

252 Our work showed that some of the townships in Charlevoix county had been undervalued by the assessors. The board, I

think, has succeeded in convincing the assessing officers that my report was reliable. The board did not give me instructions as to the manner and method of carrying out my work. I got this from Mr. Davidson. I have not seen any instructions in writing or print, and oral instructions didn't in detail point out exactly how I should carry on the work. Did not specify the number of parcels to be examined outside of the sale property, but that was left to my judgment. And did not call upon me to ascertain the aggregate value of all the property in the townships.

Nor the percentage of assessed to true cash of all the property in a township. It simply related to the pieces of property that I examined. It was our intention and object in selecting parcels for pickups to select parcels which would fairly represent the average condition of the township. I made the selection independent of the supervisor's judgment. We had conferences with the supervisors after we had prepared our figures, and in some cases communicated them to him. We always inquired of the supervisor whether he had a uniform rule of treating the people in his township. And from our inquiry, we found that as a rule the properties were assessed on the same basis according to his knowledge of the properties.

I think, with very few exceptions, the supervisors made an honest effort to assess the property of their townships upon the same percentage or same basis.

In the pickups I endeavored to include parcels which represented a fair average of the condition of the township. The valuations given by us in our report to the commission were a fair representation of the other property of the township from our best information and knowledge. I don't think the sales or parcels represented a

253 fair average of the condition of the balance of the township. In most instances we found that the properties were assessed on the same basis, the same percentage, and this applied in every township we examined.

#### Recross-examination :

When I say I selected an average piece, I mean that if I found a section that was about the same all the way through, we would select one or two descriptions in that section. If I found a section where some of it was cleared and converted into farms, we would take one or two descriptions of the farm property and one or two of the other properties, whatever they might be.

In Delta county there are spots of good timber and poor timber, places where there are poor farms and good farms. We took some of each. We didn't select any of the factories or manufacturing industries in those districts. In the townships where there were farms there were no manufacturing properties, with the exception of Masonville, and in townships where there were manufacturing properties, there were only saw mills. We got a saw mill occasionally and made a report of it.



I don't think that the supervisors in the different townships assessed alike. In the same township, I think the supervisors assessed their property at the same percentage.

I don't think that by looking at two pieces in a township you could determine that the supervisor assessed it all at the same percentage. In some of the townships we examined, there were varied interests, such as Garden township.

“Q. I want to call your attention to Garden township; that represents your work, does it?”

(Counsel presents papers to witness.)

A. Yes, sir.

Q. Now the first description there—what does this part refer to?

A. That was the number of the slip accompanying the reports.

254 Q. You found that was assessed at what?

A. Eight hundred dollars.

Q. And what did you find the value to be?

A. Eight hundred and fifty dollars.

Q. The next piece, what did you find that to be?

A. It was assessed at \$1,300.

Q. What did you find the value to be?

A. \$1,400.

Q. Had the supervisor assessed those in the same proportion?

A. Well, not exactly; no.

Q. Was it anywhere near?

A. Yes, sir; not very far off.

Q. Can you figure out the percentages of those two and tell me how they are assessed?

A. It would be 94 and a fraction, and the other is less than 93.

Q. Now take the last one there, please, five hundred and divide it by eight hundred?

A. It would be 62.5.

Q. One was assessed at 94 per cent. and the other at 62 per cent.; what is the difference?

A. It would be 32 per cent.

Q. He didn't assess those two at the same ratio?

A. No, sir.

Q. One 62 per cent. and the other 94. Then it is not true that he assessed all of the property at the same ratio, is it?

Mr. BUTTERFIELD: He didn't say that he assessed it all at the same ratio.

Mr. TOWNSEND: He is testifying to that now.

Mr. BUTTERFIELD: You are misquoting it, and he has a right to have it correctly quoted.

Q. Is it correct or true that that man assessed the property at the same ratio?

A. No, sir; not in that case he didn't.

Q. You didn't find then that he assessed all of the property throughout at the same ratio?

A. We found that he endeavored to do so.

Q. What made you think that?

A. We believed that that supervisor in that township as well as in the other townships were assessing the properties on the same basis. They were not discriminating against any class of property either in favor of or against.

Q. Because you found, as I understand it, to the best of your judgment that they were assessing property at its cash value as they understood it?

A. No, sir; they were not, and they would admit they were not.

Q. Didn't you testify this forenoon that with the facts before them, not being any better acquainted with their lands than they were, they were assessing the different properties at the cash value as near as they could?

A. No, sir.

Q. You didn't testify to that?

A. No, sir.

Q. Are any two of those assessed at the same percentage?

A. No, sir; not exactly the same percentage.

Q. I show you now another leaf from that same report of Baldwin township; what is the assessed value of the part marked 'Ed Rabideau'—what do you find that assessed at?

A. At six hundred dollars.

Q. What did you appraise it at?

A. Nine hundred dollars.

Q. What per cent. is the assessed valuation of the appraised valuation.

A. It would be 66 per cent.—66 I mean.

Q. What is the per cent. of the first one upon there marked 'John Brunait,' what is the assessed value?

A. Sixty per cent.

Q. And what is the assessed value of the next one here?

A. Fifty per cent.

Q. There is 16½ per cent. between those two?

A. Yes, sir.

Q. Here is one assessed at \$500 and you appraised it at \$850?

A. Yes, sir.

Q. Figure that out and tell me what that per cent. is?

A. Less than 49 per cent.

Q. So that the supervisor was not assessing all of the property at the same ratio according to your value, was he?

A. Not according to that report, no, sir; not upon every piece of property, but the general assessments are upon the same basis as near as his judgment would dictate."

After examination witness says that the same condition, namely,

the difference in percentage, runs through all the sheets of his report.

In Garden township there were four sales which showed an average per cent. of 83.82; two of those pieces were assessed, one at 93 and the other at 94 per cent. I have no reason to believe that there were any more of the 93 and 94 per cent. pieces in the township.

If I had picked up a few more of those, it would have reduced the average.

I do not consider that we were qualified to estimate timber lands and so did not make any estimate of the timber lands and could not tell whether they were assessed high or low, except from our general knowledge and the information we could get.

I did not state that we took an average piece of all the property in a township. We would take an average piece in each section that we visited. Where we did not visit the section, we had no personal knowledge. We could not visit half the sections in one of those townships if we worked there a year and devoted all of our time to it, not to make a thorough examination of every description. I got an average as near as I could. I could not swear it was an average of the township.

257      ARTHUR PATRIARCHE, a witness produced and sworn on the part of the complainant, testified as follows :

Direct examination by Mr. RUSSELL :

Q. Where do you reside ?

A. In Detroit.

Q. What is your business ?

A. General traffic manager of the Pere Marquette system.

Q. How long have you occupied that position ?

A. For three years, with the present system.

Q. What was your business before that time and what position did you occupy ?

A. I was traffic manager of the Flint & Pere Marquette railroad ten years.

Q. Will you please state briefly what has been your railroad experience.

A. From ticket agent to my present position, covering a period of 28 years.

Q. Have you been engaged in the service of different railroad companies.

A. With the exception of one year I have been with the same company.

Q. And all of your service has been in the State of Michigan

A. Yes sir.

Q. And one year you were with the Michigan Central ?

A. Yes sir.

Q. And the rest of the time with the Flint & Pere Marquette, and now with the present Pere Marquette system.

A. Yes sir.

Q. Will you tell us then the extent of your work and  
255 duties in your present position.

A. The duties of the general traffic manager is the authority and supervision of the passenger and freight departments of the corporation.

Q. In the matter of rates, and in the conduct of the business of the freight and the passenger traffic in all of its branches upon a railroad, that is under your supervision and control?

A. Yes, as to the traffic department.

Q. With respect to the handling of the business in all respects except in the operation of the railroad.

A. That is right, yes.

Q. And with respect to the operation of the railroad, I take it, you are brought into close union and conference nearly all the time are you not?

A. Yes sir.

Q. Now in determining the rates, for instance, in freight traffic, to what extent do you have to have knowledge of the conduct of the operation of the road?

A. In determining the rates?

Q. Yes, in determining the rates in your business?

A. Well, we would have to have knowledge of the conditions that surrounded the cost and expense of the operation in the territory, the locality where we were going to establish those rates, or in the origin of the traffic itself.

Q. Then as to the time and the rate of speed, etc., at which the trains can be moved.

A. Yes sir.

Q. Is this true also in respect to the passenger traffic?

259 A. It is.

Q. So that in your position you can speak as one having authority with respect to the conduct of the tariff department and one having knowledge of the general conduct of a railroad?

A. I think so.

Q. And its operation?

A. Yes sir.

Q. Are you familiar with the construction and operation of the so-called interurban roads of the State?

A. I have a general knowledge of the construction and operation of the interurban roads.

Q. Can you tell us about how many miles of so-called interurban street railways there are now constructed and being operated in this State?

A. I haven't got the actual mileage, I have a knowledge of the system and a knowledge of the mileage.

Q. Can you describe to us generally where the roads within your

knowledge are located, and how they are constructed, those that are now in operation or were in operation in the year 1902?

A. The Detroit & Northwestern operates to day between Detroit and Flint, and a branch out to Northville, and there is one line operating between Detroit and Port Huron; there is another line operating between Detroit, and Mt. Clemens, a line between Detroit and Pontiac; a line between Detroit and Jackson; a line between Grand Rapids and Holland, and a line between Grand Rapids, Muskegon and Grand Haven; and there is some mileage west of Jackson that I am not familiar with there; there are links in there that I don't know very much about. There is a line operating between Detroit and Wyandotte and *and* possibly another line that will be operating between Detroit and Toledo.

260 Q. There was one in 1902 from Monroe to Toledo.

A. Yes, between Monroe and Toledo that was in operation in 1902.

Q. Those that you have mentioned are all that you can now recall?

A. There is a line between Bay City and Saginaw.

Q. Those are all that you can recall from your personal knowledge?

A. Those are all that I can recall.

Q. Do you know whether the roads that you have mentioned were engaged in the year 1902 and are now, in the transportation of passengers and freight?

A. I cannot say they all were, but I can say some of them were.

Q. Which ones would you say are engaged in the transportation of both passengers and freight, and were in 1902?

A. The Detroit & Northwestern, the Detroit, Ypsilanti & Jackson, the Grand Rapids & Holland, the Bay City and Saginaw. Those are the roads that I know are actually engaged in carrying passengers and freight.

Q. Did you mention the Detroit and Pontiac?

A. I did not, for I am not so sure upon their freight features

Q. You mentioned the Detroit & Northwestern?

A. Yes sir.

Q. In the conduct of the freight and passenger traffic on the roads that you mentioned that were in operation last year do they enter into competition with the railroads, the steam railroads of the State?

A. They do.

261 Q. Now describe to us just how that business is done upon the interurban roads in comparison with the railroads—is it practically the same?

A. Their warehouses in the city of Detroit are located in much the same locality as that of the steam roads. Their vehicle of transportation has the character of one of the baggage cars of a steam road, that vehicle is handled at a warehouse just the same as a box car is handled at the warehouse of a steam road; it passes over the tracks under the trolley service of the city street railway companies

and it is the same character of service that is in Grand Rapids in connection with the Grand Rapids & Holland railroad and with the Grand Rapids, Muskegon & Grand Haven. Between Bay City and Saginaw, their freight service is rather limited to the capacity of a portion of the passenger vehicle, or what we call the baggage department. Their services, as far as they go, is considered superior to steam road because their cars are more numerous; for the short haul their tariff rates are less than that of the steam roads, and where the steam road is in competition with the electric road we usually lose the package business.

Mr. TOWNSEND: I want to object to this testimony as incompetent, immaterial, and I can not see as yet that it has anything to do with the case.

The WITNESS: The electric roads are not at the present time engaged in the transportation of car load freight as it is understood by the steam roads, so that we find the competition concentrated to that of package freight, which would be in the line of groceries, hardware and produce less than carload shipments.

Q. Was there not some little business done in carload lots as far back as 1902, in respect to shipments of fruit and fuel, with interurban service?

A. In the early part of 1902 one of the companies was engaged in the transfer of fuel which they received in a car of their own and which was transferred from a car of the steam road.

Q. Then, is there any par-tical difference in the shipment of package, or was there at that time, between the shipment of package freight by a shipper over any of these street interurban roads and a shipment made over a steam road between the points reached?

A. There was no difference in the methods of transportation except in the service.

Q. You have already spoken of the service as being somewhat more frequent and generally at a lesser rate on the street interurban road?

A. Yes sir.

Q. Now in respect to passenger business, what have you to say as to the comparison?

A. The passenger business as to the short haul, has been practically absorbed by the electric railroads, the service is more frequent and in many cases, the fare is very much less.

Q. So that you say with respect to both the freight and passenger traffic between the points reached on the steam roads and the street interurban roads, there is a direct competition?

A. Yes sir.

Q. And there was a direct competition?

A. Yes sir.

Q. Have you found with respect to the construction and extension of the street interurban roads that this competition is increasing?



A. I find it is, particularly in the passenger department.

Q. Do you know whether upon the street interurban roads mail and express matter is carried the same as upon the steam road?

A. I haven't learned that.

Q. You don't know as to that?

A. No sir, I do not know.

Q. The Detroit & Pontiac road, does that come into competition with your own system of road, the Pere Marquette?

A. No sir.

Q. I understand you are not familiar as to the way business is conducted in Detroit with reference to the business conducted on the Detroit & Pontiac road?

A. No sir.

Q. Do you know under what laws and under what form of organization the street interurban roads are doing business?

A. Well not very clearly, not enough to make any statement on it.

Q. Do you happen to know whether the roads you have mentioned are organized under the general railroad law?

A. I understand they are not.

Mr. TOWNSEND: We object to that question and answer as incompetent and immaterial. None of this evidence is the best evidence that can be produced, and it is largely hearsay.

Q. You have spoken of the vehicle in use upon these roads. Now can you tell us as to the construction of the roads, as to whether they are railroads in which the property is devoted to the business of transportation in substantially the same manner or in the  
264 same manner as that of the steam railroads?

A. I understand it is standard gauge, heavy rails and standard ties.

Q. And operated as you have stated outside of municipalities so as to carry stuff to and from between one village or one town and another?

A. Yes sir.

Q. For distances as far, as you have stated, as Detroit is from Port Huron?

A. Yes sir.

Q. So that you can say the property of these companies is devoted substantially to the same business as that of the steam roads?

A. Yes sir.

Q. Does the road with which you are connected operate sleeping and chair cars?

A. We operate chair cars, not sleeping cars, that is, of our own.

Q. I mean belonging to your own road?

A. Not to our own road.

Q. When did your road cease to handle and operate its own sleeping cars?

A. In 1901.

Q. And what did you substitute for your own cars?

A. We employed the Pullman sleeping cars.

Q. What chair car service do you operate upon your road ?

A. We operate quite an elaborate chair service over pretty nearly the entire service.

Q. How is that business conducted ?

A. The company owns its own cars and employs its own porter, all the appointments are owned by the company and we  
265 collect the fares.

Q. That is an extra charge ?

A. Yes sir.

Q. Over and above the regular fare ?

A. Over and above the regular fare.

Q. And that charge varies according to the distance that the passenger occupies the chair ?

A. Yes sir.

Q. Do you know whether any of the railroads in the State in the year 1902 operated their own sleeping cars ?

A. I think there are two roads in the State.

Q. What are those ?

A. The Canadian Pacific sleeping cars pass through Michigan and it operates in and out of Detroit, and I understand the Duluth South Shore & Atlantic have sleeping cars of their own which they operate.

Q. The Duluth, South Shore & Atlantic is practically a branch of the Canadian Pacific operating in Michigan, isn't it ?

A. Yes sir. It is an independent company but owned by the Canadian Pacific.

Q. Do you know with reference to the Soo line ?

A. I don't know anything about it.

Q. By the Soo line I mean the road extending from Sault Ste. Marie through Michigan to St. Paul and Duluth.

A. I don't know, I never heard of their operating them.

Q. Do you know of a chair car service upon other railroads in the State aside from the Pere Marquette, operated by the railroad companies with their own cars ?

A. Two of them.

Q. What are those roads ?

A. The Ann Arbor road and the Grand Rapids & Indiana.

Q. What is the length of the line of the Pere Marquette  
266 system upon which chair cars are so operated by that company ?

A. I should judge in the neighborhood of 1500 miles of our system operates chair cars.

Q. And what about the length of the Ann Arbor road of which you spoke ?

A. Well that would be their entire mileage from Toledo to Frankfort, I don't know what the mileage is.

Q. The other road of which you spoke is what ?

A. The Grand Rapids & Indiana.

Q. And the full length of that road ?

A. I think so, yes sir.

Q. Now, what is the arrangement between the railway companies and the Pullman Palace Car Company with respect to the operation of sleeping and chair cars?

A. Well, as far as I know they are varied; they vary all over the country.

Q. Do you mean vary with respect to the amount paid the Pullman Company?

A. Yes sir.

Q. But with respect to the business as it is conducted by the Pullman Company it is substantially the same?

A. It is the same practically.

Q. Tell us what the Pullman Company undertakes to do?

A. They undertake to furnish a car and porter service and all its appointments and that car is operated over the route of one or more  
267 railroads from a point of origin to its final destination and the car is usually taken care of by the railroad company as to furnishing water and looking after its running gear, the Pullman Company collects its own fares and the railroad company has no interest in that beyond the railroad fare of the passenger that occupies the car and their compensation varies according to the systems that are employing the Pullman car.

Q. What difference is there with respect to the conduct of the business between the operation of the sleeping cars on the roads which you have spoken of by the Pullman Company and the operation of the chair cars on the roads you have spoken of?

A. There is no difference, we perform in the operation of our chair cars exactly the same service as would be performed by the Pullman Company if it operated a chair car.

Q. Do you know about the rate charged, whether that is substantially the same?

A. The rate of the Pullman Company is higher as a tariff than the rate we charge over the same distance.

Q. Is that generally true to your knowledge?

A. It is.

Q. Is it true generally on the other roads of the State?

A. Yes sir.

Q. And as to the character of the car and its equipment, the chair cars on your road and the Pullman, what difference is there?

A. The Pere Marquette railroad considers that it has the finest chair cars there is, and therefore we would say the service was superior.

Q. Then the accommodation as furnished to the passenger  
268 for the extra fare on the Pere Marquette railroad and by the Pullman Company in its character is substantially the same, but you think somewhat more commodious on the Pere Marquette?

A. Yes sir; I think the appointments are a little finer.

Q. With respect to the sleeping cars as they are operated on the

railroads that you have mentioned and the cars as furnished by the Pullman Company, what difference if any is there?

A. Well, in the Pullman service in sleeping cars it is considered a superior one to that of the individual service of a railroad company; that is the position we took when we operated our own sleeping cars.

Q. In what respect is that?

A. The car is finer, the berth is larger and altogether it is a better constructed car; and the passenger would feel that it is a safer car to ride in; we always considered the Pullman sleeping car service better than our own.

Q. So that you would say there is a difference in the convenience and that the accommodation of the passenger is somewhat better served by the Pullman cars?

A. Yes sir.

Q. And isn't it a fact with respect to through service where a car passes from one railroad to another that the convenience of the travelling public is much better served by a through line such as the Pullman?

A. A great deal better, and it can only be obtained by the operation of a Pullman car.

Q. The construction of the cars is substantially the same, as I understand you to say, and the character of the service in the chair car service for which an extra fare is charged and in the berth and section service given to the passenger for which an addition  
269 to the railroad fare is made.

A. Those are alike yes sir.

Q. So you say that the business as conducted by the Pullman Company in respect to furnishing sleeping car accommodation and chair car accommodation, is substantially of the same character as that furnished by the railroad which you have mentioned in the State?

A. Yes sir.

Q. In the manner you mentioned?

A. Yes sir.

Q. There is this difference: That in the one case the cars are owned by the railroad companies and operated entirely by them, and in the other case the cars are owned by the Pullman Company and the stipulated amount is paid for the use of the cars, or some other arrangement is made whereby those cars will run over that system of railroad and the Pullman Company allowed to collect its own fare for such chairs and such sleeping car accommodations.

A. Yes sir.

Mr. WYKES: I move to strike out the testimony of this witness in all matters except as to such that he has related with reference to the Pere Marquette. As to all other matters, I ask that the evidence be stricken out on the ground that it is not the best evidence, that it is largely a matter of conclusion and hearsay, and not given from his own knowledge.

## 270 Cross-examination by Mr. WYKES:

Q. The interurban business is practically new in this State, isn't it?

A. Yes, a few years.

Q. You have enumerated a list of companies which are doing that class of business. Can you tell us when they commenced doing business in this State?

A. Not each one of them.

Q. Enumerate as many as you can.

A. I can tell you when the Detroit & Northwestern began a freight business, if it is freight you want.

Q. I mean the entire interurban business.

A. Well they began doing their freight business in 1902, and the Grand Rapids & Holland began doing its freight business in 1903.

Q. Can you give about the exact date in 1902?

A. No sir, I cannot.

Q. Can you give it approximately?

A. Well I should say as to the Grand Rapids & Holland that they commenced doing their freight business about the month of May or June 1903. Their business began as far as we know after the opening of the steamboat line from Chicago to Holland.

Q. As to the other lines you mentioned, when did their business begin?

A. I can only say as to the year.

Q. 1903?

A. No sir. The Detroit & Northwestern in 1902.

Q. Now are there any others?

A. There is the Detroit & Jackson.

Q. They are doing a freight business also?

A. They have been doing a freight business for some years.

Q. Can you give about the date of that?

271 A. No, sir, I can't give the date; it is one of the old companies.

Q. How about the line that runs from Monroe to Toledo?

A. That is not in the freight business.

Q. Are there any lines which go beyond the boundaries of the State which are doing a freight business?

A. I think not.

Q. This line between Toledo and Monroe is the only line which passes the boundaries of the State to your knowledge.

A. That is the only one to my knowledge.

Q. Do you know whether it is a continuous line from Monroe to Toledo?

A. Yes, sir; it is, from Monroe to Toledo.

Q. What is the mileage of that?

A. Well that is about twenty miles.

Q. What is the mileage of the Detroit & Northwestern?

A. I couldn't say.

Q. What is the mileage of the Holland Interurban road?

A. Well, I should say in the neighborhood of 23 or 24 miles.

Q. Do you know of any others that carry freight?

A. No sir, not any others beyond what I have already stated.

Q. Have you the total mileage of the interurban roads?

A. No sir.

Q. Can you approximate it?

A. No, sir; I couldn't give you any idea of it.

Q. Have you any data which would indicate the total value of the portion used in carry- freight?

A. No, sir; I couldn't give you any figures on it at all.

Q. Have you any knowledge of the manner in which those roads acquired their right of way?

A. Only from hearsay.

Q. Do they possess the right of eminent domain?

A. Well, that I couldn't answer.

Q. Isn't it true that practically they are constructed over private rights of way?

A. Some of them are.

Q. Purchased and not condemned?

A. Some of them are.

Q. You stated did you not that there were none that you had knowledge of that were organized under the general railroad law.

A. Not the electric roads that I have any knowledge of.

Q. They are organized generally under the street railway laws?

A. Whatever the law is; I don't know what it is.

272 Q. Do you know anything as to the extent of the interstate traffic of this line between Monroe and Toledo?

A. Oh it is very slight.

Q. Do you know as to the method of fixing the rates of these interurban roads?

A. No sir, I do not.

Q. Isn't it a fact that they are fixed by the local boards of supervisors, or the city councils through which, or in the municipalities in which the roads run.

A. I couldn't say.

Q. Haven't you knowledge that it is ordinarily made a matter of contract between the railroad company—

A. I never heard of it upon that basis.

Q. The business that is done by these roads is purely local in character?

A. Yes sir.

Q. While some of it is between cities they stop, do they not, at any crossing, at every place, anyone can go and flag them?

A. Is that in the transportation of freight?

Q. In the transportation of passengers.

A. In the transportation of passenger- I think they have their fixed stations and stopping places.

Q. About how frequently do those occur?



A. Well I should say every mile or two miles or three miles, they vary on the different roads.

Q. Isn't it true it occurs on every crossing?

A. They have passed me on a crossing.

Q. How about the rapid railway, have you any knowledge of that?

A. No sir, I have not, I never have been at an intermediate station.

273 Q. Now the motive power of those roads is different from the ordinary railroad, isn't it?

A. Yes, entirely different.

Q. They run entirely by electricity?

A. Yes sir.

Q. And what sort of a crew does it take to run one of these trains?

A. A motorman and a conductor, so far as I can say.

Q. On one of the ordinary railroad trains what crew does it take?

A. It takes the engineer, and fireman to run the locomotive, and it takes the conductor and one or more brakemen to manage the train.

Q. Now the steam train is made up of a number of different cars, isn't it, while the interurban runs a single car ordinarily?

A. A single car, yes sir.

Q. In a large number, if not in the most instances, the interurban road runs along the street and is occupying a part of the highway, while that is not true of the ordinary railroad?

A. That is right.

Q. You said something about the carload lots that were carried by the interurban roads. Have you any knowledge of the extent of this business of carrying carload lots?

A. I think it is very small, so far as the interurban roads are concerned.

Q. Isn't it a fact that where they do carry them in carload lots that is a very exceptional case.

A. Very exceptional cases.

Q. And they are transferred from the steam road?

A. Yes, from the steam road to the electric.

274 Q. You don't mean to say that the same car which runs over the electric right of way would run over, and would be transferred over to a steam right of way?

A. It is not.

Mr. RUSSELL: Just the load.

Q. Isn't it true that ordinarily those interurban roads have a stipulation in their charter that they shall only carry freight in the night time?

A. I never heard of it.

Q. And that they shall be limited to a certain number of cars a day?

A. I never heard of that.

Q. Isn't it true in the city of Detroit?

A. No sir.

Q. Have you ever seen one of these franchises of a street railway?

A. No sir, I have not.

Q. So you would not be competent to judge whether that condition was in it or not?

A. No sir, I am not competent.

Q. Ordinarily this freight is carried in a small compartment of the ordinary coach, ordinarily, I say?

A. In the city of Detroit and on the Detroit & Northwestern that I cited as a freight road, their package business is carried in a vehicle that is similar to what we call a baggage car, and that the car carries nothing but freight. In the service between Bay City & Saginaw I stated that the compartment there used was a portion of a passenger car, what we call the baggage department.

Q. On other roads than the Detroit & Northwestern the freight is usually carried in a compartment of an ordinary car.

275 A. It is always carried in a separate car from my own observation.

Q. That is, on the Detroit & Northwestern?

A. Yes sir.

Q. But on the other lines it is usually carried in a compartment of the same car?

A. In the line operating between Grand Rapids and Holland they operate separate freight cars.

Q. You have spoken of the competition between your road and these parallel interurban lines. Has the traffic on your road been materially affected by this?

A. It has between given points.

Q. Between what points?

A. Well between Detroit and Northville.

Q. Have you any figures to indicate the amount of difference?

A. No sir, it is practically wiped out between Holland and Grand Rapids as to package freight.

Q. Haven't your passenger earnings as a matter of fact, increased gradually every year since you were paralleled by these other lines?

A. Not between those two points.

Q. As a whole have they?

A. The general business of the passenger department has increased.

Q. Can you give me the number of sleeping cars that are operated by railroads in this State?

A. No sir.

Q. And not leased from the Pullman companies?

A. No sir, I can only speak for our own road.

Q. It is a very limited number, isn't it?

A. Well there are quite a number of them.

Q. How many?

A. I couldn't tell you.

- Q. Can you give me the mileage over which they run ?
- 276 A. No sir, I cannot.
- Q. You say it was over the Canadian Pacific. What is the mileage of the Canadian Pacific in Michigan ?
- A. Those that are using their own sleepers and not Pullman ?
- Q. I am speaking of those now not operated by the Pullman Company.
- A. That would be between Detroit and Chicago, through the State of Michigan.
- Q. Over what line ?
- A. Over the Wabash.
- Q. That runs from Detroit ?
- A. It runs down for about 60 miles within the State and then it operates in and out of Detroit as to Canadian points.
- Q. That is, it starts at Detroit and runs across the river ?
- A. Yes sir.
- Q. And about how many trains a day carrying sleepers do they run over that line ?
- A. They have two trains in each direction daily.
- Q. Carrying how many sleepers ?
- A. Well one sleeper on each train.
- Q. That would be four sleepers ?
- A. That is four sleepers for the round trip.
- Q. Four sleepers a day ?
- A. Yes sir.
- Q. What would those sleepers approximate in value ?
- A. Well sir, I couldn't tell you.
- Q. What does a Pullman sleeper approximate in value ?
- A. From 18 to 20,000 dollars.
- Q. Those sleepers would not be more valuable than that ?
- 277 A. No sir, they would not be more valuable than that.
- Q. Those are the only sleepers you know of that are operated in Michigan by non-Pullman lines ?
- A. No sir, I mentioned one other road, the Duluth South Shore & Atlantic.
- Q. What is its mileage in Michigan ?
- A. I don't know.
- Q. How many sleepers do they operate ?
- A. I don't know that.
- Q. It hasn't more than three trains a day each way.
- A. I only know as to the Duluth, South Shore & Atlantic, that they do operate a sleeping car of their own, I have no further information.
- Q. How many trains do they run over their line a day ?
- A. I don't know.
- Q. Do they run more than three each way ?
- A. I couldn't answer that question without a time card.
- Q. You couldn't approximate the number of sleepers they have in Michigan ?

A. No sir.

Q. Something was said about the Soo line, that don't operate any sleepers?

A. Nothing was said by me.

Q. Do you know anything about the number of Pullman cars that are operating in this State?

A. In this State?

Q. Yes sir.

A. No sir, I do not.

Q. Do you know anything about the Pullman mileage in the State?

A. No sir.

Q. Now you have stated that the business done by the railroad companies operating their own cars, and by the railroads operating Pullman cars, is substantially the same?

A. Yes sir.

Q. And is the character of the business of the Pullman Company the same as the business of the railroad company?

278 A. Why—you say the character of the business?

Q. The business of the Pullman Company?

A. I should say it was.

Q. Explain briefly what the business of the Pullman Company is?

A. It is to furnish sleeping cars for the accommodation of passengers desiring to use sleeping berths during a night journey, [and operates chair cars in the day time.

Q. Isn't it true that it furnishes those cars to the railroad company?

A. The railroad companies operate and haul those cars and those cars are furnished by the Pullman Company for the accommodation of those passengers.

Q. They are furnished to the railroad company under an agreement with the company?

A. They are under contract with the companies.

Q. A certain amount is paid, either by the Pullman Company for hauling the cars or by the railroad company as a rental of them, isn't that true?

A. Yes sir.

Q. The Pullman Company is engaged in the business of leasing cars to Michigan railroads, isn't that true?

A. Well I wouldn't call it exactly leasing, they are operating under contract.

Q. They are loaning their cars?

A. Yes, and they are operated by the railroad companies.

Q. Do you say they are now engaged in the railroad business in Michigan?

A. They are engaged in the same character of business we are.

Q. Do they own any line of road in Michigan?

A. Do they own any?

279 Q. Yes sir.

A. No sir, not that I know of.

Q. Do they own any stations in Michigan?

A. None that I know of.

Q. Do they operate any cars of their own; that is, furnish the motive power?

A. They own their cars.

Q. Do they furnish the motive power?

A. No sir.

Q. Do you furnish the motive power for hauling your own cars?

A. Yes sir.

Q. Then isn't there a difference between the business you do and the business they do?

A. I don't think so.

Q. They lease the cars, or loan them to you, that is to the railroad companies and the railroad companies draw them, is that right?

A. That is the way it is done.

Q. And yet you say the business is of the same character?

A. Yes sir.

Q. As that of a railroad company that hires them and furnishes the motive power, and which collects the fare and which pays the rental?

A. It is exactly the same operation we are performing ourselves as to the Pere Marquette railroad.

Q. But the railway business that the Pullman Company does is limited to the collection either of a rental of those cars or the payment of mileage and the collection of a fare for the occupancy by the person who is travelling?

A. That is about the service.

Q. They don't collect any fares for transportation?

A. They collect nothing but their own fare.

280 Q. What sort of an arrangement have you with the Pullman Company?

A. Well sir, I haven't any personal knowledge of the contract in my mind at the present time, it is either on mileage or rental.

Q. What Pullman cars do you run on your line?

A. We run a sleeping car between Detroit and the Saginaw valley and between Chicago and Grand Rapids.

Q. What is the nature of that, do you pay the Pullman Company for these cars or do they pay you for hauling?

A. We pay them.

Q. About what is the rate you pay them?

A. Well I couldn't say what our arrangement is with them definitely.

Q. You simply hire the cars?

A. It is operated on a contract. In the summer time we have additional cars in our tourist business.

Redirect examination :

Q. In describing the business done by the interurban roads and the method of conducting the business you stated that as to the carriage of freight they had regular freight stations?

A. Yes sir.

Q. And that such freight packages were shipped and carried from one station to another the same as shipments would be made upon any steam railroad?

A. Yes sir.

Q. They wouldn't take up a package of freight at an intermediate point where they had no station?

A. They might pick up an intermediate package in some cases but they are usually conveyed on a regular freight service though.

Q. In respect to the passenger traffic: The frequency of the stops upon the interurban roads are much greater than upon steam roads?

A. Very much.

Q. As the roads approach the cities they will stop at most any point for a passenger?

A. Yes sir.

Q. Substantially the same as a street car in a city?

A. Yes, in a city.

Q. Are you not familiar with the business of the Detroit & Pontiac road and the Rapid railway from Detroit to Mt. Clemens?

A. No sir, I am not.

Q. Those roads do not come into competition with the Pere Marquette?

A. Not at all.

Q. In respect to through shipments of freight on the interurban roads, do I understand you to say that there were no through shipments, and that they were all local?

A. They are all local on the interurban roads?

Q. Then you don't know of your own knowledge that shipments emanating from the interurban roads are consigned through to some of the steam roads?

A. Not of my own knowledge, I have no knowledge of any of that through traffic on any of the interurban roads, possibly there is one exception that I mentioned, and that is this Holland & Grand Rapids road in connection with the boats on Lake Michigan carrying traffic from Chicago to Grand Rapids.

Q. You have no knowledge then whether or not there is competition in through shipments, say from Pontiac and Mt. Clemens which has taken away a large amount of traffic from the Grand Trunk?

A. I have no direct knowledge of that.



## Re-cross examination :

Q. Do you know where the terminal of the Holland Interurban is at Ottawa Beach ?

A. Well I don't know where it is exactly, but I have an idea of its location, it is down near ours.

Q. Do you know whether it runs to the wharf at Holland ?

A. Yes sir.

Q. Does it run to the wharf at Ottawa Beach ?

A. It runs to the wharf at Holland and it runs to the opposite side of the lake at Ottawa Beach, what is called Macatawa Park.

A. Do the steamboats land near where it terminates at Ottawa Beach ?

A. Yes, they land passengers at Macatawa Park and they land their freight in Holland.

Q. They land their freight entirely in Holland.

A. Yes sir. The dock and the interurban road is there.

Q. Is their freight house at the dock ?

A. The freight is transferred from the boat immediately into the interurban car.

Q. What is the freight that is transferred from the boats ?

A. All kinds of merchandise.

Q. Consigned where ?

A. To Grand Rapids.

Q. From where ?

A. From Chicago.

Q. Have you ever made any shipments over that line ?

283 A. Myself ?

Q. Yes sir.

A. No sir.

Q. Have you, as agent for anyone ?

A. No sir. We are not agents for them.

Q. What is the source of your information ?

A. It is a competitor of ours and they have taken our business away.

Q. Then it is simply an inference that you draw from the fact that you have a little loss of business between certain points, is that true ?

A. We have no business and we had it.

Q. Your knowledge is an inference drawn from those conditions, you have no absolute knowledge of this fact other than that.

Q. I have the fact that this traffic has been taken away from us and put on the electric road.

Q. Your answer is a conclusion drawn from that fact ?

A. Yes sir.

Q. Your road is subject to regulation by the commissioner of railroads, isn't it ?

A. Yes sir.

Q. Do you take care of the business that your company has with him?

A. The commissioner of railroads?

Q. Yes.

A. All that pertains to the duties of that office?

Q. It all goes through your department?

A. Not through my department.

Q. Does it go through the legal department?

A. Through the legal department of the general manager's office.

Q. Do you know whether the interurban roads are subject to the same character of regulation that your road is in that respect?

A. I understand that it is not.

Q. It is not subject to his jurisdiction?

A. No sir, so far as I know it is not.

284 T. J. G. BOLT, on behalf of complainant.

Direct examination by Mr. BUTTERFIELD:

Resides in Muskegon county. Aged 55. Doing examination work for tax commission. I began in June, 1901. My previous business was farming. I have taught school—been school commissioner of the county for four years.

Have been supervisor of Moorland township for twenty or twenty-two years. This has been continuous, except when I was highway commissioner.

In 1901 I made examinations of the assessment in various counties, when they were preparing the report to the State board of equalization, working in the counties of Barry, Ionia, Montcalm, Clinton, Isabella, Gratiot, and I think, Midland, Lake and Mecosta, that was my own, and the men that were with me, Mason, Manistee, Newaygo, Dickinson, Ontonagon.

The general character of the work was the taking of sales furnished by the tax commission, verifying them, taking some specials and finding out how near the cash value was to the assessed value. These results were tabulated and sent to the tax commission. The sales came to us in sheets, giving the name of the grantor and the grantee, the date of the sale, the amount named in the deed.

(Mr. TOWNSEND: I make the usual objection to the evidence on the ground that this man is incompetent to testify upon this subject.)

(Mr. TOWNSEND: I will also add the objection to all these exhibits upon the same grounds that we have objected heretofore.)

The investigations of the property sold was the same work that we have been doing since. We viewed the property. The difference between the work of 1901 and 1902 was that the sales examined in 1901 reached back for four or five years, while in the later examinations we have taken the sales for only about two years.

Some of the counties visited in 1901 were well settled and some of them were not. Clinton, Barry and Ionia are considered  
285 old and well settled counties.

"Q. Then I ask you whether in the year 1901, in the counties you have mentioned, whether the real estate, now particularly, was assessed at its true cash value?

Mr. TARSNEY: We object to it as incompetent, the witness not having shown sufficient knowledge on the subject.

A. Why, I think in my judgment—that is from my reports—it was not."

In the investigations it was the practice to communicate with the supervisor. Sometimes before, and sometimes after the examination.

Generally in 1901 I think that the properties upon which we made a report represented the condition existing through the township as to the ratio between the assessed and true cash value. The information we had on that point was from inquiry and observation, the inquiry including the supervisor.

(Under objection, by Mr. Townsend, as hearsay and incompetent.)

I don't recollect that I ever found, in 1901, a supervisor who did not state that he had assessed relatively equal all over the township.

It was the universal claim on the part of the supervisors that they assessed relatively. There were cases where that was not the case. I found from independent investigation that in some cases they had not assessed at the same percentage all over the township. I reported this to the commission, either in writing or verbally. There were five or six of us associated together in that examination and covering those counties that I have mentioned.

We came together and took the figures that each submitted and combined them in a report, and the figures went to the commission and were compiled together. The idea was not for two examiners to examine the same property, but sometimes two of us rode together, and reported our combined judgment.

286 In 1902 I examined Montcalm, Shiawassee, and, I think Saginaw.

Witness asked to refer to report of Montcalm county. (Exhibit H) for percentages, and (under objection, by Mr. Townsend, as incompetent and hearsay), testified:

## Montcalm County.

Townships.	Sales.				Pickups.			
	No. ex.	As'd val.	Verf. con.	F. man val.	No. ex.	As'd val.	F. man.	Comb. %
Belvidere.....	55	\$21,680	\$37,295	\$38,030	6	\$8,670	\$18,200	54.
Bloomer.....	78	55,070	90,501	82,510	10	28,600	40,240	66.5
Bushnell.....	53	48,150	74,875	73,075	14	38,700	54,450	68.1
Cato.....	65	28,565	50,585	51,375	13	15,425	32,250	50.2
Crystal.....	64	44,440	71,150	72,300	8	21,100	32,600	61.5
Day.....	48	56,445	77,800	83,080	00	.....	.....	67.9
Douglass.....	38	25,675	42,725	40,275	9	9,300	17,500	60.5
Eureka.....	30	42,300	57,425	50,050	8	18,250	21,600	77.
Evergreen.....	55	31,725	43,025	43,100	10	9,000	11,400	74.7
Fairplains.....	52	36,410	54,700	53,675	13	27,210	37,400	69.8
Ferris.....	48	19,425	33,875	31,400	11	19,000	31,450	61.1
Home.....	67	27,780	38,412	37,615	7	20,400	30,600	70.6
Maple Valley.....	68	24,100	49,700	49,350	16	18,650	37,300	49.3
Montcalm.....	26	15,225	23,925	23,560	14	21,500	31,800	66.1
Pierson.....	31	18,340	24,800	23,240	14	24,900	33,300	72.3

The footings are not my own. I didn't make the percentages, that was done in the office by the clerks of the commission.

(Mr. TOWNSEND: I object to the use of these sheets (sheets from which the witness took figures in above table) they have not been verified, and it is incompetent and immaterial.)

I had proceeded as far down as Pierson, Montcalm county, yesterday reading the footings from the reports themselves. I took the footings from the report up to that time, and have compared them in a way that I am satisfied with those footings.

If some persons should verify the footings which I read, then the verification of the whole report would be completed. I am reading it as I find it, of course.

If we divide the total of the assessed values of the sales and pickups by the total valuation as fixed by the examiner of the sales and pickups, we will have the percentage which I have been reading as the percentage of assessed to true value of all the properties examined. And if the computations have been correctly made from my report, the percentage shown will, as near as I can estimate it, represent the percentage of assessed to true cash value of all the property in the township; if the assessments are in true relation to one another, but not if they are not.

(Mr. TOWNSEND: That is objected to as incompetent.)

We seek to include parcels which fairly represent the average work of the assessing officer over the entire town.

While the supervisors claim that they are treating people alike

and assessing all property at its true cash value, I find they had failed to do so in some cases. Where the examination and the assessment, in my judgment, is uniform, the percentage obtained by computation would represent the percentage of assessed to true value of the entire township; where the assessment is not uniform, it would not represent it, and in that case no average can be possible.

And no calculation of the assessment work in that township could be made upon a percentage basis, but only upon a re-assessment of every parcel.

I don't say that the supervisors claimed in every instance that they attempted to put down the same percentage of the true value all over the township. Generally they do. There are cases where they won't even claim it.

"Q. Do you mean to say you have found an assessing officer in all those counties that you mentioned yesterday that you visited who did not pretend that he treated all the people alike, but admitted that he assessed one man at 90% of the true value and another man at 60% or some other percentage, varying to that extent, is that what you mean?

A. Well I have found men—I mentioned this, that I have found men that would acknowledge, perhaps not come out in plain English and say that, but they would imply it at least, that they had assessed non-resident lands nearer to the value than they had resident lands.

Q. And those are the isolated cases to which you refer?

A. Yes, sir; that occurs usually in the more semi-cultivated townships or districts where there are more non-resident lands.

Q. You say those cases are rare, but that they do exist?

A. They do exist. Perhaps I shouldn't say that they are rare, but they are rare in certain parts of the State. I think perhaps it is almost—I wouldn't say that it is universal, but it is more in certain portions of the State, but it is quite a usual practice."

When we made the examination for the State board of equalization it was hurriedly gone over.

In 1902 I don't remember having found any assessing officer who admitted that he was discriminating. It was the general claim that in the counties which I examined in 1902 that the assessing officers had treated everybody alike. In some of the townships it is true that the computed percentage, assuming that the computation is correct, fairly represents the percentage of assessed to true value over the entire township. In some of the townships it is not true. The reason being that in some townships my report shows a great variation of percentages. One piece of land, according to my comparison, is assessed at 85%, another at 70%, and another at 90%, and it would be absurd for me to testify that throughout the whole township it would attain an exact result.

"Q. But those townships are the towns where you said a

moment ago that no average could be obtained, and the only way to make a perfect correction would be to re-assess all the property in the town.

A. That is true also in some of the townships given on the basis of the non-resident property perhaps, and as that occurs there is a variation between my judgment and theirs.

Q. In those townships I understood you to say that the assessing officer claims—

(Mr. TOWNSEND: I object to the argument of counsel, to the witness and to the leading character of the questions.)

Q. I understood you to say that even in those townships  
289 the assessing officer claims that he is treating them all alike?

A. Yes, sir.

Q. And the discrimination is your judgment rather than his, is that correct?

A. Yes, sir. To make it plain, only of course as I say, where there are non-resident lands, they tacitly acknowledge at least that they favor the resident owners.

Q. I am speaking of the counties you examined in 1902.

A. These two counties in question are Shiawassee and Montcalm. Montcalm has some of these non-resident lands in some two townships of Montcalm, and there is certainly a discrimination between, and I can make it specific perhaps. In the townships of Sidney, as my recollection runs, the resident lands are assessed lower relatively than the non-resident lands, and while the supervisor generally—as anybody knows—won't come out and say these things yet he will lead you to understand and tacitly acknowledge that he has done that, but to come right out and to say it in plain English, that he practices that which is contrary to law, and that he knows it, he won't do it, but he will give you to understand this is so and allow you to understand it so.

Q. That you say is quite the general rule in the townships where there is a large amount of non-resident lands?

A. Yes, that has been my observation and I believe it is so acknowledged by most all that are interested and understand tax matters."

Witness testified, using his own report, giving footings not made by himself and the percentages from Exhibit H.

(Mr. TOWNSEND: I want it understood that he is reading those percentages from a sheet with which this witness had absolutely nothing to do whatever, and we object to it as incompetent and immaterial.)



290 Township.	Sales.				Pickups.			
	No. ex.	As'd val.	Verf. con.	True val.	No. ex.	As'd val.	True val.	%
Pine .....	32	\$12,820	\$25,421	\$23,525	15	\$9,625	\$18,625	53.2
Reynolds.....	50	11,115	28,855	25,195	8	14,900	35,500	42.9
Richland.....	43	13,580	22,122	22,848	7	11,270	17,500	61.6
Sidney .....	42	16,100	29,245	27,245	9	8,450	17,950	54.3
Winfield .....	30	17,725	38,155	36,480	14	14,150	29,400	48.3
Cities:								
Greenville .....	80	57,930	80,110	84,335	00	.....	.....	68.7
Stanton .....	33	20,475	25,290	25,275	00	.....	.....	81.

Witness testifies to his work and results in Shiawassee county from his own reports (percentages from Exhibit I) as follows:

Township.	Sales.				Pickups.			
	No. ex.	As'd val.	Verf. con.	True val.	No. ex.	As'd val.	True val.	%
Antrim .....	21	\$20,400	\$34,000	\$34,500	25	\$59,000	\$94,500	61.55
Bennington.....	36	51,350	68,735	71,425	21	85,600	126,800	69.08
Burns .....	28	38,254	53,350	51,925	23	96,800	134,700	72.36
Caledonia .....	30	46,640	66,695	64,450	15	45,620	63,000	72.38
Fairfield.....	33	40,890	63,700	63,150	11	27,920	42,200	65.31
Hazleton.....	44	76,570	85,315	84,575	19	51,100	55,850	90.91
Middlebury....	19	23,610	29,975	28,650	18	75,100	84,050	87.58
New Haven.....	37	63,750	72,575	71,750	18	57,500	64,750	88.82
Owosso .....	38	54,465	69,317	70,730	18	49,430	62,300	78.9
Perry .....	44	38,610	59,900	60,425	25	65,750	108,400	61.80
Rush.....	31	30,835	45,775	48,550	24	62,650	98,150	63.72
Sciota.....	35	26,640	35,535	35,585	22	72,800	96,850	75.1
Shiawassee.....	38	46,250	65,407	62,675	18	44,275	60,300	73.85
Venice.....	32	60,310	80,926	79,600	15	41,975	55,050	75.96
Vernon.....	98	77,725	131,080	135,635	12	26,600	42,550	68.54
Woodhull .....	25	22,980	30,215	31,310	22	49,210	69,000	71.96
Owosso city ...	108	77,646	117,411	117,463	21	150,300	203,100	71.1
Corunna city...	36	18,725	26,065	25,400	12	17,150	23,900	72.76

Witness shown a paper consisting of four sheets, being a résumé of the work in Shiawassee county, marked Exhibit U. That is my general report and is all in my handwriting.

(Mr. BUTTERFIELD: I offer this in evidence.)

(Mr. TOWNSEND: We object to it as incompetent.)

Exhibit U was then read into the record.

The property and value of the real estate in the township of which I am supervisor has increased very little since 1899, but the

assessed value has increased about 130 %, and in the present year, 1903, it is assessed at its true cash value, but it was not so assessed in 1900.

(Under objection, by Mr. Townsend, as incompetent and immaterial.) I think perhaps in 1900 I added 100 per cent. or thereabouts, and I added something more in 1901, but don't think I added anything in 1902, I think by that time I had it up.

(Under objection, by Mr. Townsend, as incompetent and immaterial.) My recollection is that the other townships in my  
291 county were not assessed at their actual cash value. The township of Eggleston, and some others were, but not all of them. One year my township was cut down twenty thousand dollars by the county board of equalization as being assessed too high. This was after I added the 100 %. Last year they didn't cut it down any but took it as a basis and raised others that were not supposed to be assessed so high.

It is my belief that it was the practice of the other supervisors of the county to assess resident property at a uniform percentage.

"Q. And that has been the habit of assessing officers in your county for a good many years prior to 1899, hasn't it?

A. To do what?

Q. To assess the property in their township at a percentage of its true value less than 100 %.

Mr. TOWNSEND: That is objected to as leading.

A. That is, the resident part?

Q. Yes, sir.

A. Oh yes, sir. As near as they could I think it was their intention to assess.

Q. And that has been the habit for a good many years?

A. Yes, sir.

Q. Don't you know, as a matter of fact, that that is the habit as a general proposition all over the State of Michigan?

A. To do what?

Q. To assess property prior to 1899 or to attempt to assess property in their townships at some percentage of the true cash value less than 100 %.

Mr. TOWNSEND: That is objected to as incompetent.

A. That is my belief and my understanding that they used to assess property at less than its actual value; that is as far as my knowledge extended. I don't know what they did in the south part of the State here.

Q. You had quite a little knowledge of the counties in the  
292 vicinity of Muskegon?

A. Yes, sir.

Q. And the same general habit existed, did it not, after the year 1899 down to the present time, except so far as it has been changed by the actual work of the State tax commission.

A. Well, not only changed by the actual work of the State tax commission, but by the influence of the commission.

Q. You think the commission has influenced the assessments in the State?

A. Yes, sir, I think that is what influenced them, they thought they might be getting after them, and I think a great many others did the same and raised their assessments after the commission was organized. They began to see that it was necessary to assess at 100 %, and they began to raise their assessments and some actually attained 100 %.

Q. And in the townships you have examined even as late as 1902 you did not find any where they had got up to the full 100 % in your judgment?

A. Yes, sir.

Q. You did find some?

A. Yes, sir.

Q. You didn't in those you reported?

A. Not in those two.

Q. What other counties did you examine in 1902?

A. Well, I don't know that I examined any part of 1902 that came up to actual value, that is, right up to 100 %. Of course, in Shiawassee county, the township of Hazeltine and Middlebury and the township of New Haven, while they are not right up full 100 %, they are assessed so near that in talking with them we generally considered that the variation might be in the judgment of the supervisor and the examiner; that is to say, that the trend of the supervisor is to get a very conservative cash value, and the natural trend of the examiner—not so much now as in the past—has been to get at rather a strained 100 %, rather high, and that is the natural make up of the minds of the two; they are exactly diametrically

293 opposed, one is searching for some thing and the other is—

Q. Trying to hide it?

A. Yes, that is the facts in the case.

Q. One is searching for something and the other is trying to hide it?

A. To a certain extend that covers the situation, I think.

Q. So when you find a township that is up to say 90 % of its true value in your judgment you recommend to the commission that there is no immediate necessity for action in that township?

A. Yes, sir; that is my manner, and I believe the commission feel that way too."

#### Cross-examination by Mr. TARSNEY:

The work of 1901 was travelling through the counties getting a general idea in order to make report to the State board of equalization. Before the adjournment of the State board of equalization I was engaged about five and one half months, and during that time travelled in the counties of Clinton, Isabella, Gratiot, Midland, Lake, Mecosta, Manistee, Mason, Newaygo, Dickinson, and Ontonagon.

I made a partial examination in Saginaw before January 1, 1902. In this work I had with me five men of whom I had supervisory control. We worked several counties at a time.

I made all the examination that was made in Ontonagon county that year. We examined the mining properties, the sales, wood lands and a number of specials; there probably a week and half or two weeks.

Taking Ontonagon as an illustration: We verified the considerations for sales given in deeds, if possible the information being derived of others. Sometimes we would get it from one of the parties and a great many times from other persons. We had no means of knowing whether they told the truth or not.

We also examined some of the property sold in Ontonagon county.

294 The property in this county consisting of either mines or timberlands. I remember there being one tract there of 100 million feet; it ran all the way from 100 thousand to 700 thousand to a forty, in our judgment. This was not a very close estimate; we didn't count the trees and take the acreage as they usually do, but took a general concept of the forty and between ourselves agreed about what we thought was on the forty.

Mr. Horton, who was with me, was a farmer and had been a lumberman and an estimator of timber. We did not estimate the whole 100 million. The supervisor had an estimate and he gave us the figures; he had a book with the estimate of the whole 100 million, and we took some of the descriptions and compared his figures with our estimate upon several forties. We estimated the timber upon a number of forties by walking upon the forty and estimating it in a rough way, not getting it down to a fine estimate, but looking it over.

We had both had some experience in estimating timber.

I think we examined more than five forties in a hundred, but am not sure. When we got through with the pine tract, we would compare notes and talk about it and reach a conclusion. There was a variation in judgment between us, but not as wide a range as 15 or 20 % when based upon pine we both looked at. Had never examined pine on the Upper peninsular before, though Mr. Horton had. Some of this pine lay within two miles of a railroad.

Did not know at that time the pine in that section is affected with a small shake, a hair shake, and we did not take it into consideration. We were not estimating so close as that in our figures. I never looked at it to see what proportion of it had this shake, though my judgment is there was very little in the pine I saw. The supervisor had some estimates of this timber in a large book that he had made and we compared a few forties with the estimate that he furnished. I did not say we reported on the whole 100 million, I said there was a tract there of that size.

295 Our report did not cover anything except that which we personally saw. If the tax commission reported the entire property of Ontonagon to the State board of equalization at

the same percentage that we reported the part we personally examined they did it upon the basis of our reports.

The number of descriptions we reported was a small amount in comparison with the whole. Did not make as thorough examinations at that time as I have recently made.

We compared the consideration which we found with the assessment of the particular parcel on the tax roll. Would sometimes be more than one description in a section, and in a great many no descriptions at all. We generally reported upon seven or eight or nine sales, and we could not have had one in each section. We didn't report upon all the sales that were furnished. In our hurry to get through, we took seven or eight sales and a certain number of pickups. The sales reached back four or five years.

Had no means of knowing whether the sales were for cash, except as we investigated.

In Montcalm county, in 1902, the sales taken were mostly made the same year or the year previous.

The sales I reported on were mostly part cash and part time. I consider a sale as good as cash when there is enough paid down so that the mortgage will sell for its face. In making the examination we relied as to the value and sale price upon information from others.

The actual value of property is, in general, based upon my own judgment. The value is dependent on a good many things, the location, environment, neighborhood, character of people that settle about, proximity to schools and roads, distances from, and kind of, market, and without a knowledge and familiarity with all those conditions, a stranger could not give a correct value.

A fairly intelligent man residing in the community, familiar with the property, is better able to judge of the value of the prop-  
296 erty than a man living in a different section of the State.

Put the supervisor of Pine Lake into my township of Moorland and he would be rather at sea, if he didn't make any inquiries, but he could inform himself, though it would take him some time to obtain the information. I think he could put a value as near correct as I could if he exercised the judgment I do. He might vary in valuing a farm, calling it worth forty dollars an acre, when I called it worth fifty; he might call it fifty where I called it forty; and I do not know that that would be at all strange.

Two men living in the same community may differ, five, six or seven dollars an acre on a value that I called worth forty dollars, and when we speak of value in certain kinds of property, it is a good deal the product of one's mind, just what he happens to think. I think as a general proposition that it is a very good proposition that in the valuation of property, we have people who are a little optimistic and habitually place values upon property higher than others who take a more conservative view, depending on their nature. We sometimes find men who are absolutely honest and think they are exercising their best judgment, and yet are unconsciously swayed

by their environments and interest in the subject that they are dealing with.

Q. And that is illustrated, I think perhaps, by a remark you made this forenoon in relation to values, that some would lower their value or have lower values than others, and yet think that they were fixing the right value?

A. Yes, I think that is true.

Q. You think that is so, don't you?

A. Yes, sir.

Q. So that a supervisor or assessing officer in assessing the property in his jurisdiction, recognizing that the law requires him to assess it at cash value, may stop and say, 'What will that thing sell for spot cash,' and fix a sum upon that according to his judgment as to what somebody would pay for it, paying spot cash, isn't that right?

A. Well, I think that they do; yes, sir.

297 Q. Then somebody else taking the same piece of property and saying that that could be sold upon the usual terms of one-quarter or one-third down and the balance in three or four or five years, he would say that it is worth five or six or eight or ten dollars an acre more, and both be honest?

A. Yes, both be honest about it, and both might say it could be sold for that much more for spot cash, too; that is the variation of judgment of the two men; I think so.

Q. So that you don't think it is true that the supervisors, some of whom you have spoken of as having in mind this morning in making the assessment of property at its cash value, were honest in making their assessments; that is some which you now think is less than cash value of certain property?

A. Well, now, I think there are some of them, as I have before stated, that were calculating that they were the cash value, and perhaps they all did; I don't know as to that; there were some that did that I thought were practically cash value."

I think some of the assessing officers of the State intentionally under-assess property. I don't know that that is true, but my judgment is that they know that they are assessing at less than cash value, from my observation that is the exception to the rule, I think perhaps there are quite a number, a good many. "Of course, I don't know that this would be true, but in my judgment I should say that they must know that they are under-assessing; well, I can hardly answer that question properly, because it is a matter of mental philosophy to a certain extent.

If a re-examination of the same property occurs, it is accidental and I didn't seek to take the same places. My judgment on a particular piece of land might vary from what it was before. I think I might give a different value two years apart on the same property, and if I could forget what I did the first time, even two hours afterwards, I think any person could do that. That judgment

298 would not vary in range very widely, say about 10 per cent.; I would not regard that as at all strange.



Has had occasion to look up city properties considerably in the last twenty years.

Doesn't think that he could walk from here (city hall in Lansing) to the Downey house and give the value per front foot on main street. It would take two or three days to get a sufficient idea of how property was selling in Lansing, by inquiry, by observation, relying very largely upon the opinions expressed by others, so far as the value of the realty is concerned; so far as the value of the building is concerned I could estimate that

In the township of Vernon, Shiawassee county, there is the village of Durand and the village of Vernon; there I investigated ninety-eight sales and twelve pickups. A number of them were houses and lots in the villages. Our report was not intended to cover any other property than those 110 pieces, and from those 110 pieces, I am not able to tell what percentage of the whole number of parcels appearing on the assessment roll.

That is also true with the other townships and cities in Shiawassee county.

In the personal examinations made, I drove to all the lands and looked at them; I had my plats and went through the village and looked at the property, that is, that we reported upon, but not the others. And upon the number reported upon and examined I based the report that was read into the record this morning.

We assumed that the balance of the townships in the county and the descriptions in the township are assessed at substantially the same ratio as that we gave in the report. So that in a way, it was upon that assumption that I thought a particular township was assessed at a certain percentage of its value. I have said, in my report

that the township was worth about so many dollars, just as  
299 though I was looking at a farm. I would say that is a nice township, and in my opinion is worth a million dollars, or eight hundred thousand, and I am aided by the minutes I have obtained, yet not entirely so.

The soil will vary upon a given section; there may be sand on one side, clay on another and loam somewhere else, and all these conditions necessarily enter into and affect the value of a particular forty upon which they are located. I made a minute examination of certain specific descriptions in each part. I made a cursory examination of the whole, and these things combined to give me a concept by which I say that a township is worth about a million dollars. I could not say it without that minute examination and comparison, of course.

In 1901, the work was a sort of pioneer work, upon which I would not want to rely. The subsequent one a more critical and careful examination and more reliable. I would not rely upon the examinations made in 1901 as a buying and selling proposition of property.

When in the report upon Shiawassee county it is said that a particular township as a whole is assessed at a certain percentage that

means that it was a sort of judgment based upon the examination of parts and speculative as to the balance. And when I find, as I did in one of those townships, that the property was assessed at approximately 90 per cent. of what I thought was its value, I would say that the property was substantially assessed at its cash value. I don't know as I could say the same if it were 85 per cent., but I could hardly tell you. The difference could be attributable to the difference in an honest judgment between two men, which might exist to the extent of 15 per cent.

If in our examination, instead of including fifteen pieces, we had taken thirty descriptions, the relative proportion between the assessed and real value would differ.

If I had examined twice as many pieces in the township of Woodhull as I did, it would make a little difference and change the percentage a little. But my judgment is that it would change 300 the percentage a little. But my judgment is that it would change it but a little. In the selection of pieces, if upon certain sections there was a sale, I would try to take my special pieces from other sections, so as to get one description from each section throughout the township. We take those descriptions at random.

It very often happens that in a given section there may be one farm consisting of sixty acres of land worth \$60 an acre, and another farm of equal size worth \$25 an acre, and some land not worth over \$10 or \$15, so that in order to determine the actual value of a certain section it would be necessary to examine all the property on that section.

I have found property actually assessed at more than its value. Several descriptions at least, and so far as I know that is attributable to the difference in judgment between myself and the assessing officer. That condition might exist in every township, but I have not found it in every township.

#### Redirect examination :

In saying that the work of the commission in 1901 was unreliable, I mean that it was not as reliable as the work of 1902.

The fact that the percentages in the 1902 work might be lower than those in 1901 would not enter into determining which were the more reliable, if they were different, I should rely on the 1902.

Witness asked to compare percentages on Exhibit M report to State board of equalization, with those on tabulated sheet for county of Shiawassee, Exhibit I.

(Mr. TOWNSEND: We make the same objection that we did to the original use of Exhibit M as being irrelevant, hearsay, incompetent and immaterial.)

I don't know that the comparison increases my respect for the work of 1902, though I am surprised to find that they are so near together. I never looked at them before; in the 1901 work 301 the sales reached back four years or so; I don't know how it was in that particular county.

302 WILLIAM CASEY a witness produced and sworn on the part of the complainant, testified as follows :

Direct examination by Mr. BUTTERFIELD :

Q. Where do you reside ?

A. Thompson, Schoolcraft county.

Q. How long have you resided there ?

A. Four years the 5th of last February.

Q. How old a man are you.

A. 47.

Q. What is your business ?

A. Mill foreman, saw mill foreman.

Q. Are you in the employ of any manufacturing company or are you employed at any mill at present ?

A. No sir.

Q. When did your employment cease ?

A. Last Saturday evening.

Q. Prior to last Saturday evening with what company were you employed ?

A. The F. & F. Lumber Company.

Q. What does the F. & F. stand for ?

A. I suppose for Fuller & Friant.

Q. For how long had you been in the employ of that company prior to last Saturday evening ?

A. From about the 5th of February until last Saturday night—four years ago last February until last Saturday evening.

Q. In what capacity were you employed by that company ?

A. As mill foreman.

Q. Where were you stationed ?

A. At Thompson.

Q. What railroad, if any, runs through Thompson.

A. The F. & F. Lumber Company's railroad.

303 Q. Is that the only road ?

A. The only one.

Q. Do you know whether the Fuller & Friant Lumber Company is a corporation or not ?

A. I think it is, it is limited.

Mr. TOWNSEND : We object to this as not being the best evidence.

A. All I know about it is what I saw in the paper that it is incorporated.

Q. Do you mean in the newspaper or in the papers ?

A. In the newspapers.

Mr. TOWNSEND : I object to it as incompetent and hearsay.

Q. Is there the word " Limited " in the name ?

A. Yes sir.

Q. It is called the Fuller & Friant Lumber Company, Limited ?

A. The F. & F. Lumber Company, Limited.

Q. Do they always put in the word Limited ?

A. Always.

Q. How long is this F. & F. railroad ?

A. It is between 27 and 30 miles, all of the branches and the main line, all told.

Q. And where does it start from and go to ?

A. It goes from the dock at the mill and it runs northwest up through Thompson township and runs up almost to the line of Delta county.

Q. It starts from the dock, you mean from the mill at Thompson ?

A. At Thompson, yes sir.

Q. What is the station at the other end of the road ?

A. Well there is a camp.

Q. A lumber camp ?

A. Yes sir.

304 Q. What is it called ?

A. Well there are five of them, there are five camps up there.

Q. Each one has a name ?

A. Yes sir.

Q. What do they call the one at the end of the line ?

A. The one at the end of the line is called the C. L. camp, the Chicago Lumber Company.

Q. Does that belong to the Fuller & Friant Lumber Company ?

A. No sir.

Q. How many men are in the C. L. camp ?

A. I couldn't say just how many there is now but the foreman told me that he thought they had 125.

Mr. TOWNSEND: We object to it as incompetent and hearsay.

Q. When was this road built ?

A. I don't know when.

Q. Was it in operation when you commenced to work for the company ?

A. Yes, the lower end of it was.

Q. What do you mean by the lower end, how far did it run when you commenced to work there ?

A. Well they run about 18 miles.

Q. And it has been extended to 27 or 30 miles since you have been working there ?

A. Yes sir.

Q. What other stations are there upon the road besides the Thompson and the C. L. camp ?

A. There is what is called the Big Spring and there is a camp there, and there is a jobber by the name of Chris Peterson and John Beaton and Frank Roxberry, and what they call the headquarters camp, and that is the only camp that the F. & F. has got.

305 Q. And the Big Spring and Chris Peterson and John Beaton and Roxbury are all owned by jobbers ?

A. By jobbers yes sir.

Q. Are they in any way connected with the Fuller & Friant Company?

A. No sir, only through jobbing for them.

Q. Do you mean to say that they have contracts to get out certain stuff for the F. & F. Company?

A. With the exception of Beaton, and Beaton owns his own land his own timber.

Q. Beaton owns his own land and the C. L. camp is owned by the Chicago Lumber Company?

A. Yes sir.

Q. Does this railroad cross any other railroad?

A. The Soo line crosses it.

Q. Is it a grade crossing?

A. Yes sir.

Q. What is the system of signals that governs the movement of trains at the crossing, is there a tower and an interlocker?

A. No sir.

Q. Or is it operated by a flagman?

A. No sir; the train stops.

Q. All trains stop?

A. All trains are supposed to stop.

Q. On both roads?

A. Yes sir, on both roads, 400 feet on each side.

Q. Does the Fuller & Friant road cross any public highways?

A. Yes sir, it crosses five of them.

Q. Does it run through land that is not owned by the Fuller & Friant Company, I mean, does it run through land which is not owned on either side of the right of way by the Fuller & Friant Company?

306 A. I couldn't say exactly.

Q. How is the railroad constructed, is it of a standard gauge?

A. Yes sir.

Q. And what kind of rails?

A. A part 40 pounds and a part 30.

Q. T rails?

A. Yes sir.

Q. What sort of equipment has the road?

A. Well they have got three locomotives, 49 Russell logging cars, four small flat cars, two cabooses and one box car.

Q. At the crossing of the Soo line do you have any track connection with them to transfer cars?

A. Yes sir.

Q. Do the cars of the F. & F. Company go off of that road onto the Soo line?

A. I never saw any of them.

Q. Do the cars of other roads come onto your road?

A. Yes sir.

- Q. And that was so, was it, last year, in 1902.
- A. Yes sir.
- Q. Did that road, the F. & F. road, in 1902, carry freight or persons outside of its own company?
- A. Yes sir.
- Q. Other persons?
- A. Yes sir.
- Q. Who did they carry freight for?
- A. For Peterson and Roxberry and for—
- Q. (Interrupting.) Do they carry freight for the Chicago Lumber Company?
- A. No sir.
- Q. Beaton?
- A. Yes sir, and Roxberry and Peterson and Chauncey Hinckson, they drew stove wood for him.
- Q. What are the kinds of freight carried besides stove wood?
- A. Bark, tan bark, pulp wood logs, saw logs and ties.
- Q. Do they carry merchandise to the camps?
- A. Yes sir.
- Q. For all these people you have spoken of?
- A. Yes sir.
- 307 Q. Does the merchandise go in carload lots always, or sometimes in less than carload lots?
- A. Well, very seldom they get a carload.
- Q. It is very seldom they have a carload?
- A. Yes sir.
- Q. But this freight consisting of bark, and pulp wood logs and ties of course comes in carloads?
- A. Yes sir, the biggest part of the time.
- Q. So that in 1902 the F. & F. railroad was transporting freight in carload and less than carload lots for other people?
- A. Yes sir.
- Q. Did the F. & F. road in 1902 carry passengers?
- A. Yes sir.
- Q. And collected a fare?
- A. Yes sir. They have a sign up in their office that they will charge a limited fare.
- Q. The cars you spoke of, the logging cars, you call the Russell logging cars?
- A. Yes sir.
- Q. Are they different in any respect from the flat cars used on the Soo line and other railroads?
- A. Yes sir.
- Q. In what respect?
- A. They are only 20 feet long and there is no platform upon them.
- Q. How about the cabooses, do they differ from the cabooses used on other railroads?
- A. Well they are smaller but built on the same plan.



Q. How about the box car, you say they have one box car, is that a standard box car or smaller?

A. It is smaller.

Q. You mean it is shorter?

A. It is shorter, it is only about 30 feet.

Q. And how many wheels has it?

A. Eight.

308 Q. How about the locomotives, what make of locomotives have they?

A. One of them, the largest one I think, is a Baldwin engine.

Q. Is it of the same type used on other railroads, or on some railroads?

A. It is an older one, of the old style.

Q. Was it bought from another railroad?

A. Yes sir.

Q. Second hand?

A. Yes sir. Then they got a smaller size than that, it is the Porter Bell, about 16 tons, and then they have got a small one, still smaller, that they use of switching in the yard, moving lumber from the yard down to where they ship it by boat.

Cross-examination by Mr. WYKES:

Q. You say you have been employed, or had been, up until last Sunday, by the F. & F. Lumber Company for four years?

A. Yes sir.

Q. What was your position with that company?

A. Foreman.

Q. As foreman what were your duties?

A. Well my duty was to keep the sawmill in repair, employ all the men that were employed in the saw mill and unloaded and took care of all the stuff that came down over the railroad.

Q. What salary did you draw in that position?

A. \$1200 a year.

Q. What connection had you with the shipping that came over this railroad?

309 A. Well, I unloaded everything that came down and came to the mill and came to the yard to be shipped to other places by boat.

Q. Did you have anything to do with the superintendence of the operation of those cars of this 20 miles of road?

A. Just whatever Mr. Norris would tell me to do, he was the superintendent.

Q. And the general manager?

A. Yes sir.

Q. What was the reason you left the employ of this company?

A. Well I thought I could do better, so I quit.

Q. Have you anything in sight, are you going into any other kind of business?

A. I was going to Seattle.

Q. You are not an officer in this company?

A. No sir.

Q. And you never have been an officer in this company?

A. No sir, I only held the office of foreman.

Q. You had nothing to do with the books?

A. No sir. I brought all the time, and everything like that, I kept the time.

Q. That referred merely to the sawmill?

A. Yes sir, and the railroad.

Q. You had nothing to do with the books in which the accounts of this railroad were kept and entered?

A. No sir.

Q. Were there any such books—did they keep any books of account with this railroad, to your knowledge?

A. I never saw any. They have got a bookkeeper there but I never saw his books.

Q. Did you know anything about the arrangements, under which the shipping over this road was done?

A. Only just what Mr. Norris told me to charge when they came and what if there was anything going up, and what I was to charge to put it upon my book and turn it into the office.

Q. Did Mr. Norris tell you to make a charge?

A. Yes sir.

Q. What became of the proceeds, and I am speaking now of the carrying of passengers. Did you ever make a charge for the carriage of passengers?

A. No sir, I never made a charge for carrying passengers.

Q. Did you ever know of anybody making a charge for carrying passengers?

A. I did, I saw the conductor taking money.

Q. Do you know whether he turned this money into the company?

A. I don't know.

Q. You know that he didn't turn it into the company don't you?

A. I couldn't say.

Q. You know that the company never received a cent for the carriage of a passenger over the line?

A. I don't know. I don't know no such thing, sir.

Q. Do you know that they ever did?

A. I know the conductors charge

Q. That went into the company—do you know that they ever took in a cent for the carriage of passengers over this line that went to the company?

A. I don't know.

Q. What is the character of the passenger cars of this company—they haven't any have they?

A. No sir.

Q. Their equipment is limited, that is, outside of locomotives, it is limited to log-ing cars with the exception of one box car.

A. And two cabooses, yes sir.

Q. They never carry anything to your knowledge but forest products?

A. Coming down?

Q. And going up, they carry nothing but provisions for  
311 the men in the lumber camps?

A. Yes sir.

Q. Now you have stated that one terminal of this company is at the village of Thompson. How large a settlement is there at Thompson.

A. It has probably about 200 or 225 people.

Q. Are all these people in the employ of the F. & F. Lumber Company?

A. No sir.

Q. Isn't the great majority of them in the employ of the F. & F. Lumber Company?

A. A majority of them is.

Q. Would there be any settlement there if it were not for the existence of the F. & F. Lumber Company's plant?

A. I couldn't say, I think there would be though.

Q. Now running up the line, what is the first place that you have said that there was something in the nature of a settlement—Big Spring is it?

A. Yes sir.

Q. Have you ever been there?

A. Yes sir.

Q. What is the character of the settlement there if there is any?

A. It is just a camp.

Q. Just a camp?

A. Yes sir.

Q. How long has it been there?

A. It was there—it was built before I went there.

Q. And it is still there?

A. Yes sir.

Q. It is still in operation?

A. Yes sir.

Q. With how many men?

A. I couldn't say.

Q. Who is it owned by?

A. I don't know.

Q. Are the men employed in getting out timber for the F. & F. Lumber Company?

A. Peterson runs it.

Q. Peterson runs the Big Springs outfit?

A. Yes sir.

Q. And his logs go to the F. & F. Lumber Company?

312 A. No sir, not all of them ; a part of them do.

Q. Didn't they in 1902?

A. No.

Q. Do a part of them ?

A. A part of the logs, the cedar and the ties and the posts and the pulp wood are sold outside.

Q. Is this camp on the Fuller & Friant land ?

A. I couldn't say.

Q. Do you know whether they are cutting on the Fuller & Friant land?

A. I think not.

Q. What is the next camp up the line ?

A. Beaton's.

Q. How large a camp is that ?

A. Well they have from 18 to 30 men, and probably 35.

Q. Employed simply in the winter ?

A. Winter and summer.

Q. Do they log in there in the summer ?

A. Yes sir.

Q. Do they do any shipping over the F. & F. Company's road ?

A. Yes sir.

Q. Do the F. & F. Company get all the logs they take off ?

A. Yes sir, all the logs.

Q. They get everything they take off ?

A. No sir.

Q. What is it they take off that the F. & F. Company don't get ?

A. The ties and the posts.

Q. Are those shipped over the F. & F. Company's line ?

A. Yes sir.

Q. Do you know the amount of ties and posts shipped over the F. & F. Company's line in this last year ?

A. No sir, I don't.

Q. You stated you took those things off at the mill ?

A. Yes sir, but I could not say just how much there was of it.

313 Q. Do you know the amount that went down from the Big Springs outfit during the last year ?

A. No sir.

Q. The amount of logs and ties and shingles ?

A. No sir.

Q. That the F. & F. people didn't get ?

A. I do not.

Q. You took those off at the mill ?

A. Yes sir.

Q. And you don't know the amount of them ?

A. No sir.

Q. Now further up the line what was the next lumber camp or settlement of any kind ?

A. Downey's and the F. & F.

Q. All of their products run over this line?

A. Yes sir.

Q. This road is maintained by them for the purpose of taking the logs that they lumber at this camp into the mill, that is the principal purpose of maintaining the road and when they take up this camp they will take up their roads with it, won't they?

Mr. BUTTERFIELD: I object to that unless the witness states that he knows.

A. No sir.

Q. Have you ever talked with Mr. Norris upon this subject?

A. Yes sir.

Q. Hasn't Mr. Norris stated to you that they would take up this line when they finished lumbering?

A. No sir.

Q. How many men are at this camp, at the F. & F. Company's camp?

A. Well this summer sometimes there would be five and sometimes a hundred.

Q. Is that the terminal of the line?

A. No sir; the Chicago Lumber Company's camp is the terminal.

Q. How does the Chicago Lumber Company get its lumber out?

A. They haven't brought any yet.

314 Q. You have stated they haven't shipped any over this line?

A. Not from the Chicago Lumber Company.

Q. What is the purpose of the F. & F. Company's line running up into the Chicago Lumber Company's timber—don't the F. & F. people lumber up in there too?

A. They calculate to haul it, they calculate to draw for this Chicago Lumber Company 30 million feet.

Q. When are they going to lumber that, do you know?

A. They have got about two millions on skids now.

Q. Aren't the F. & F. people doing lumbering in there?

A. No sir.

Q. And isn't the lumber going to their mill?

A. No sir.

Q. Do you know anything about the arrangement, if there is any, between the F. & F. people and the Chicago Lumber Company?

A. Nothing only just what Mr. Friant told me.

Q. You have stated that they carried forest products and products for other institutions than the F. & F. Company?

A. Yes sir.

Q. Can you give the amount of that in the year 1902.

A. No sir.

Q. You cannot approximate the amount?

A. No sir.

Q. Do you know anything as to the amount for any previous years?

A. No sir.

Q. Don't you know it would not in any one exceed \$100?

A. Oh, it would exceed a thousand.

Q. I will ask you if the F. & F. Company has a regular schedule of freight tariffs?

A. I haven't got anything but hearsay.

315 Q. Do you know whether they have or not? Do you know of any regular schedule of tariffs that have been published?

A. They never had anything published, that is what the superintendent told me.

Q. As a passenger tariff, do you know of any regular schedule of passenger tariffs that they have.

A. The employees of the company went to the office to get a pass, and the conductor collected 25 cents when he could from the rest of them.

Q. How often did they carry passengers for fare that you know of—do you know of more than one instance?

A. Yes sir.

Q. Of carrying passengers for fare?

A. Yes sir.

Q. How many instances do you know of?

A. Well I paid my fare twice myself.

Q. When?

A. Once in 1892 and once in 1891.

Q. You mean 1901 and 1902?

A. Yes sir.

Q. You paid it to the conductor?

A. Yes sir.

Q. Weren't you at that time in the employ of the company?

A. Yes sir.

Q. What did you pay the fare for?

A. I was in the employ but I didn't go to the office and get a pass.

Q. Do you mean to tell me the conductor didn't know the foreman of their own mill?

A. He was to collect a fare from them if they didn't have a pass.

Q. Wouldn't he let the foreman of the mill ride without a pass?

A. No sir.

Q. Don't you know he would?

A. I know he didn't.

316 Q. Did you see him every day?

A. Ten times a day, the biggest part of the time.

Q. Didn't he know you were employed by that company?

A. Yes sir.

Q. And didn't he know the character of your position?

A. Yes sir.

Q. Yet he would not let you ride without paying?



A. Yes sir, I paid him.

Q. How far did you ride for 25 cents?

A. It was both times going from the mill to South Manistique.

Q. From the mill to South Manistique?

A. Yes sir, about four miles.

Q. Didn't you make complaint to Mr. Norris that this conductor was charging you fare?

A. No sir.

Q. Didn't you inquire as to whether it was turned into the company?

A. No sir. He had his badge on with "Conductor" marked on it, and a punch, and I supposed that he turned it in.

Q. You say you saw him a number of times a day. Did they run a train every day.

A. There may have been some days that they didn't run it.

Q. Isn't it a fact there was three days at a time they didn't run?

A. Not to my knowledge.

Q. Isn't it a fact that the trains were only run to suit the convenience of the F. & F. Lumber Company and to carry its logs.

A. Yes sir.

Q. When the F. & F. Lumber Company didn't have any logs to carry there were no trains?

A. Unless some of the other fellows had some to carry.

317 Q. Had the road any time card?

A. No sir.

Q. Or any time table?

A. No sir.

Q. Or any regular time for running trains?

A. No sir, no regular time card.

Q. They started out in the morning or in the afternoon, just as the convenience of the company indicated?

A. Yes sir.

Q. And ran on Friday or Saturday or Monday or skipped two or three days, just as the convenience of the company indicated?

A. Yes sir.

Q. Now you have said that this line crosses the Soo line?

A. No sir.

Q. Or does the Soo line cross it?

A. Yes sir.

Q. What sort of a settlement is there at the crossing of this road with the Soo line?

A. A settlement?

Q. Is there one house at the crossing?

A. There is a small freight shed, a very little one.

Q. That is everything?

A. Yes sir.

Q. Is there a "Y" from one road to the other?

A. Yes sir—no there is not a "Y."

Q. What is there?

A. There is just simply one switch that comes in on the west side of the F. & F. logging road with an interlocking switch and it runs up on to the F. & F. road.

Q. It is arranged so that a car can be run from one road to the other.

A. Yes sir.

Q. Do you know of any of the cars of the F. & F. Company ever being taken out on to the Soo line?

A. No sir, I don't.

318 Q. Isn't it a fact they do not take them out upon that line and put them into the trains of the Soo line?

A. No sir. They put them into the M. & M. trains through.

Q. What are the M. & M. trains?

A. They run from Southtown to Shingletown.

Q. There is no junction of the F. & F. Company line and the M. & M. Company line?

A. Yes sir.

Q. Where is that?

A. They connect at Southtown, at South Manistique.

Q. Do you know of a car from the Soo Company's line going over the F. & F. Company's line, do you know of such an instance?

A. Hundreds of them, sir.

Q. The cars were consigned to the F. & F. Company's lumber yard, that is, the destination was that mill?

A. No sir, the Delta Junction.

Q. Where is the Delta Junction?

A. That is where the Soo line and the F. & F. crosses.

Q. They were consigned to the Delta Junction?

A. Yes sir.

Q. From there they were taken by the F. & F. Company's engine down to its mill?

A. Sometimes to the mill and sometimes up in the woods.

Q. What character of freight?

A. Principally pulp wood, ties and posts.

Q. What were they drawing pulp wood, ties and posts from the Soo line up into the woods for, what was the purpose of that?

A. They would bring the empty boxes up into the road and load them and bring them back.

319 Q. They would take the empty boxes?

A. Yes sir. The Soo line would set them in at the junction, the empty boxes.

Q. Then when they were set in at the junction the M. & M. Company's engine would take them into the woods?

A. The F. & F.

Q. Where is Mr. Norris today?

A. That is more than I can tell sir.

Q. When did you last see him?

A. I saw him yesterday morning about eight o'clock.

Q. Where?

A. On his dock.

Q. Were you subpoenaed to come here, did the officer serve a subpoena on you and bring you here?

A. He sent me here.

Q. Who?—did Mr. Norris send you here?

A. No sir.

Q. Who sent you here?

A. A man gave me a paper and paid my fare down here.

Q. Was it Mr. Dolph?

A. I never met the man before.

It might have been a subpoena and it might not, for all I know, I am not much posted on that.

Q. Do you know Mr. Dolph, Mr. Jacob Dolph, the deputy United States marshal at Marquette?

A. I have met him yes sir.

Q. Was he the man that served the paper on you?

A. Yes sir.

Q. Is he here today?

A. I don't see him today, I left him at Manistique.

Q. Do you know whether there is any agreement between the F. & F. Lumber Company and these companies that maintain these lumber camps to carry their forest products?

A. I don't know anything about that, I couldn't say, but I  
320 know they drew their stuff down there.

Q. You don't know that there is any agreement between them?

A. No sir.

Q. Isn't it a fact that all of the transportation of forest products or freight over that line has been the subject of special contract and has been on special contract in each case, and a special arrangement for each separate transportation, and isn't it a fact that every time the F. & F. Company carries any forest product for one of these companies, it makes an arrangement for each time?

A. I couldn't say.

Redirect examination by Mr. BUTTERFIELD:

Q. You spoke of going from Thompson to South Manistique on the F. & F. road?

A. Yes sir.

Q. That is not what you call the main line?

A. No sir.

Q. There is a branch that runs from Thompson to South Manistique?

A. Right along the lake shore.

Q. And there it connects with the M. & M. road?

A. Yes sir.

Q. What does that stand for—it is the M. & N., isn't it?

A. It was the M. & N. yes sir, the Manistique & Northwestern, and it is the L. M. & M. now.

Q. What does that stand for?

A. The Leelenaw, Manistique & Marquette.

321 Q. I don't know that I understand you perfectly. You said it was the cars of the F. & F. road that go onto the M. & N. road?

A. Yes sir.

Q. But they do not go onto the Soo line.

A. I never saw any of them go onto the Soo line.

Q. Do you know whether the F. & F. road has a schedule of freight rates?

A. No sir, I do not.

Q. You don't know about that?

A. No sir.

Recross-examination by Mr. WYCKES:

Q. Is this F. & F. Company's road in the same place that it was when you first went to work for them.

A. It has a branch that runs from the mill to Southtown, that is in the same place, and also the main line of the road going up until it gets way up in the woods, and sometimes they will take it up, take the end of it up and throw it around some other place. This year I have seen new carloads of steel in there.

Q. Then only a part of it which forms a direct line from the woods to the mill remains in the same place, is that so?

A. Well, it is only just the branches that they move.

Q. They move the part that is necessary to move to get at the timber?

A. Yes sir.

Q. A part of it that forms the direct line from the woods through the part that is cleared from the woods to the mill, they leave that stationary.

A. Yes sir, they leave the stationary.

322 Q. And the rest is moved as the necessities and interests of the F. & F. Lumber Company's business require?

A. Yes sir.

Q. Now you have said that cars were run from the F. & F. Company's line to the M. & N. Company's line?

A. Yes sir.

Q. How do you know that?

A. Because I was there when they went.

Q. You were there?

A. Yes sir.

Q. Where?

A. They used to lumber, they brought down 18 or 20 millions that was cut up on the upper end of the Manistique & Northwestern road, and the F. & F. cars would go right from the F. & F. mill clear up into the woods all the way over the Manistique & Northwestern road, and sometimes the F. & F. engine would run up there

and bring them down, and sometimes the M. & N. engine would draw them over to the F. & F. mill.

Q. The train was run then to take the lumbering crew of the F. & F. Company up to the lumber camp that it has on the M. & N. road.

A. And to bring the logs down.

Q. To bring the logs down to their own mill?

A. Yes sir.

Q. You don't know of any cars going on to the line for the purpose of carrying freight for other people other than the F. & F. Company?

A. No sir.

323 HERBERT E. STONE, on behalf of complainant.

Direct examination by Mr. ANGELL:

I reside at Flint, Genesee county. I have been in the employ of the tax commission as field examiner; for about two years previously a farmer, and have held the offices of township treasurer, township clerk, supervisor.

Have worked principally in the counties of Kalamazoo, Macomb, St. Clair, Jackson, Calhoun, Oakland, Ionia, Lapeer, Livingston, Cheboygan and Eaton, beginning in November, 1901.

To verify the considerations we went to three person that bought the property or the person that sold it, and satisfied ourselves that it was the actual consideration paid, and in addition made inquiries of persons who might be supposed to know about the value of real estate in the different townships. The first man we saw would be the supervisor. We made an examination of the properties which had been sold, that being the universal custom. We drove on every section of land in a county where there was a road to it where the sale property took us. We selected the pickups from the county atlas, trying to get one piece on each section of land, and as we drove about would examine the piece determined upon.

I worked with Mr. Bibbins about seven months.

(Under objection, by Mr. Townsend, of incompetent and calling for an opinion.) I am of the opinion that Mr. Bibbins is a man of good judgment upon property. We almost always conferred together about questions of value after we had examined the property. We might differ a little at first, but usually reached a conclusion to which we could both agree. In examining farm properties we gave attention to improvements and took those into consideration.

(Under objection, by Mr. Townsend of incompetent.) I should say that I was competent to pass an opinion upon that question.

I was for three years a director of the Farmers' Mutual  
324 Fire Insurance Company and made a resurvey in three townships of all of the buildings and re-insured them. I have the sheets of Calhoun county before me. I made reports to the tax commission covering the parcels investigated in each township. I

made a part of it and Mr. Bibbins made a part, the results of those sheets were carried forward into the paper marked Exhibit N. I have compared the original sheets with them, so I can state that the footings were carried forward.

Mr. TOWNSEND: I object to the sheet as incompetent.  
Referring to Exhibit N, witness testifies as follows:

Township.	Sales.				Pickups.			
	No. ex.	As'd val.	Verf. con.	True val.	No. ex.	As'd.	True val.	%
Albion .....	3	\$9,600	\$10,600	\$10,600	31	\$114,600	\$134,400	85.3
Burlington .....	11	9,200	14,150	14,150	42	89,900	117,050	76.8
Convis .....	00				36	61,000	74,750	81.6
Emmet .....	5	6,600	8,550	8,550	34	101,290	119,700	84.1
Fredonia .....	8	14,200	19,300	19,300	36	88,900	114,700	76.9
Homer .....	21	26,585	37,400	37,400	49	111,420	143,050	76.4
Marshall .....	3	11,700	13,300	13,300	34	125,200	156,700	80.4
Newton .....	7	13,400	20,550	20,550	35	93,400	128,000	71.9
Penfield .....	6	15,500	17,000	17,000	36	90,650	103,950	87.8
Albion city—								
1st ward .....	10	6,750	9,024	9,024	14	14,850	56,200	80.6
2nd “ .....	13	10,300	12,850	12,850	8	27,400	33,700	81.
3rd “ .....	11	14,100	18,300	18,300	10	73,400	93,700	85.8
4th “ .....	10	11,100	12,525	12,525	11	37,250	43,950	85.6
Battle Creek .....	110	147,950	222,615	222,615	59	620,500	846,050	71.9
Marshall—								
1st ward .....	9	8,900	16,550	16,550	10	29,500	41,500	66.1
2nd “ .....	9	10,650	12,371	12,371	10	59,000	67,600	87.1
3rd “ .....	10	8,100	11,200	11,200	9	57,000	70,800	79.4
4th “ .....	4	2,100	3,050	3,050	17	22,225	31,050	71.3

Paper marked as Exhibit W shown witness. This is the complete report of the county of Oakland, one of the tabulations found in the files and records of the State tax commission.

(Mr. ANGELL: I offer Exhibit W in evidence.)

(Mr. TOWNSEND: I object to it as incompetent and immaterial, and not made within the knowledge of the witness.)

There are twenty-five townships in Oakland county, twenty-three of which I examined.

The two which I did not examine are Groveland and Springfield. I have before me the detailed sheets of my reports of that county. I have compared the paper marked Exhibit W with the work which I turned in myself, that is the footings, and know that they correspond.



The witness refers to his reports and to Exhibit W and testifies as follows:

325	Township.	Sales.				Pickups.			
		No. ex.	As'd val.	Verf. con.	True val.	No. ex.	As'd val.	True.	%
	Addison .....	7	\$10,250	\$13,350	\$12,850	32	\$64,600	\$80,400	80.3
	Avon .....	23	37,250	62,485	57,200	40	132,150	166,100	75.9
	Bloomfield .....	25	30,250	42,405	41,150	46	183,750	210,150	85.2
	Brandon .....	12	11,825	15,950	15,950	33	60,650	72,850	81.6
	Commerce .....	10	13,050	17,625	18,025	33	72,700	92,300	77.7
	Farmington .....	17	36,350	48,260	47,150	33	117,650	148,950	78.5
	Highland .....	8	10,550	14,150	14,150	33	67,100	85,000	78.3
	Holly .....	23	19,450	29,200	29,000	56	94,625	140,000	67.5
	Independence .....	10	6,150	7,375	7,075	33	99,100	109,550	90.2
	Lyon .....	12	18,750	21,950	25,950	33	100,000	118,200	84.
	Milford .....	18	21,000	26,675	26,815	51	107,600	127,600	83.3
	Novi .....	11	20,650	25,900	25,900	32	97,100	110,600	86.3
	Oakland .....	5	10,700	11,650	11,650	29	79,950	87,300	91.6
	Orion .....	13	18,350	24,900	24,550	31	75,220	100,880	74.6
	Oxford .....	22	18,550	27,395	26,925	49	111,150	151,250	72.8
	Pontiac .....	13	18,800	25,700	25,400	29	115,600	142,800	79.9
	Rose .....	6	6,900	9,850	9,750	36	64,700	82,500	77.6
	Royal Oak .....	15	21,100	39,520	37,800	33	67,550	102,350	63.3
	Southfield .....	7	11,500	17,520	16,500	33	113,500	133,700	83.2
	Troy .....	18	34,300	47,490	47,200	33	122,300	157,300	76.6
	Waterford .....	8	13,500	17,850	17,550	33	97,950	115,700	83.6
	West Bloomfield .....	11	26,000	36,650	36,200	33	79,300	107,500	73.3
	White Lake .....	8	9,950	14,165	13,965	32	63,700	76,900	81.1
	Pontiac city .....	93	134,825	155,761	158,300	23	164,300	179,005	88.7

In selecting lands called pickups, we knew nothing about whether we were getting an average piece or not, but got it from the map in the first instance. We endeavored to form an estimate of the value of the piece selected relative to other lands surrounding it, and we were able in that way, in my judgment, to form a reasonable accurate conclusion as to the value of the land in the township. We talked with the supervisors in almost every township.

(Under objection, by Mr. Townsend, of incompetent and immaterial and hearsay.) They would invariably say that they were assessing their properties at cash value, or at a percentage of it. We would ask them if they were assessing at cash value, and they would say yes most always, but we found scarcely any instance where they were assessing at cash value.

They claimed to assess at cash value, but did not do it. They apparently tried to treat all their constituents alike, the percentage at which they treated them would vary in different townships very much. They sometimes admitted after our examination of the properties that they were not assessing at true cash value, and sometimes would insist to the end that they were.

(Mr. TOWNSEND: This is all taken subject to our objection of incompetent and hearsay evidence, also as immaterial.)

Cross-examination by Mr. TOWNSEND:

Did not mean to say that he had compared and footed all the items on his reports of the counties of Calhoun and Oakland. I mean that I compared the footings of the reports with Exhibits N and W. I could not say whether the figures on the paper marked Exhibit W are correct. Did not make all of the figures on the paper that I have been testifying from, in Calhoun and Oakland. Mr. Wilkinson made some and Mr. Bibbins made some, my wife made some. I compared those after they were made from my field book.

They were then sent to the office. I don't know what they did with them there.

(Mr. TOWNSEND: I desire to move to strike out the testimony of this witness as to the assessments and valuations and work done in Calhoun and Oakland counties, for the reason that the same is incompetent; he has read from sheets which have not been verified, and which the witness did not make.)

(Mr. BUTTERFIELD: We expect to show by another witness that the footings which appear on the sheets are correct.)

Commissioner Sayre recommended me for appointment.

The supervisors invariably insist that they were assessing property at the cash value. As a class of men, for intelligence, honesty, and character, I think the supervisors were as good a class as any. I think that a man familiar with the assessing district has a better knowledge than a stranger would, and would make a better assessment. I spent three or three and one-half days in a township.

It keeps you quite busy driving to go over a township in three days and a half, and depends on the roads and the weather. It does not give you time to get out and go back to the end of very many farms.

We rather run through a country and look it over. We took an average piece by looking at the map, and drove by that piece forming an estimate about it.

The supervisor would certainly have a better knowledge of the land than I would, having lived in the community. The only opportunity for determining the quality of the soil was what we could see on the highway. We found some land that was assessed at cash value, and in exceptional cases more than cash value. In Battle Creek we examined about 160 pieces. There are in that city about 6000 pieces, which would be less than .3 of 1 per cent. examined.

I think that is a fair way of determining the value of the property in the city of Battle Creek. We figured the sales value as the actual value all through that vicinity, and all through the county

of Calhoun our reports were made on that basis. The verified consideration was the same as the actual consideration. We found that in Calhoun county they had been putting the consideration in the deeds at actually what they received. If we had examined .6 of 1 per cent. of the holdings in Battle Creek, that would not have made any difference in the per cent., if they had had a relative assessment.

“Q. Figure out, if you will, foot up for me the first half of the assessed value and the verified value that you had there, both of the sales and the pickups, and tell me what the per cent. is—take the first ten of them, and also put in the first page of the pickups. What per cent. do you find the assessed value is of the total?

A. Very nearly 32%, not quite.

Q. A little less than 32%?

A. Yes, sir.

Q. And what did you find the assessed and real value was of the city of Battle Creek, the whole of it, according to your testimony a little while ago?

A. I think it was 71.9.

Q. So in examining 160 pieces you find the per cent. is 71.9, do you?

A. Yes, it seemed that way.

Q. But upon examining one-half as many of the sales and the first page of your pickups, you find the per cent. to be what?

A. Thirty-two.

328 Q. Less than 32, isn't it?

A. Yes, a little less than 32.

Q. Does it make any difference whether you examine many or few pieces?

A. It depends on the assessment, whether it is relative or not. The lower it is assessed it makes a difference every time on certain classes of property.

Q. Then is it possible for you to determine the value of a township by examining any number of pieces fewer than the whole.

A. Not to be accurate.

Q. But it may make a great difference as to the number of pieces you examine?

A. It might; yes, sir.

Q. And it did right in that case?

A. It did in that case; yes, sir.

Q. More than 100%—it made a difference of more than 100% whether you examined sixteen or 160, did it not?

A. Yes sir.”

He could not say then that we picked an average piece by looking at the map. Our method of selection was the same as that employed by the other men generally. I think though some of them have taken the specials or pickups on driving over the township. As illustrated by the figures above, it makes a great difference in what pieces you happen to hit on in making the investigation, but if they

have a relative assessment throughout the township, I don't think it would make any difference; if we got a piece pretty well assessed it raised the township.

If we got one below value it reduced it, so the value might not be the value of the township, though it ought to be somewhere near it. I didn't find any case where any two supervisors assessed their property at exactly the same percentage.

They varied somewhat, that is natural, of course. There are no two men that can assess the same district alike. Two field  
329 men could not go there and determine the same value, that is an impossibility. If they had happened to pick out different pieces on the map, it might have been still more widely different, depending upon the assessment. I find that very few townships are assessed relatively, very few. We found that the smaller properties, undesirable property, is assessed nearer to what it is worth than the larger ones, the better class of property, and we find that all through the State.

#### Redirect examination :

(Under objection, by Mr. Townsend of incompetent and hearsay.) The supervisors say that they are assessing with relative uniformity.

They would not admit that they were discriminating between different descriptions and different persons. We would find that to be the case though.

#### Recross examination :

They would say that they were assessing all alike, the poor and the good all the same, and that at cash value. That they were following the law as they saw it.

330 FRED M. TWISS, recalled by defendant.

#### Direct examination by Mr. WYKES :

In 1902 there was a general review of the assessments of the city of Port Huron, the field men of the commission fixing values upon each individual piece of property in the several wards of the city.

I had charge of the re-assessment. Each piece of property in the city was inspected and the field notes contain a description of each parcel with the assessed valuation and the valuation placed by the field men.

Referring to books (afterwards marked Defendant's Exhibits 2 to 11, February 16, 1901), columns 1 and 2 of the exhibits contains the figures given to the field men, column 1 contains the description, and column 2 the assessed valuation for 1902.

The third column contains the valuation of the land as fixed by the field men; the fourth column, the value of the buildings and the fifth column the total. This was the shape in which it was re-

ported by the field men to the board. After the field notes were turned in to the board, it decided that a reduction from the total valuation amounting to about 10 per cent. should be made, and the last column in these exhibits represents the values fixed by the tax commission at the review and the figures contained in this last column are the figures which finally went on the roll as the assessed value.

The examination made in the city of Port Huron was as careful as any the tax commission has made anywhere.

I think it is true that the values fixed by the tax commission are almost uniformly less by about 10 per cent. than the values fixed by the field men, and in particular parcels the reductions run as high as 15 per cent.

In some cases the commission did not change the estimate of the field men. In the 4th and 6th wards but few of the figures were changed.

331 Cross-examination by Mr. ANGELL:

In this work I had general supervision of the field men. Worked in different wards. I formed my judgment as to the relative work of the different men and reported to the commission the result of my investigations. I thought some of the men were more conservative than others. After the whole roll was completed by the field men, the board in some instances made reductions for the sake of being on the safe side.

The tax commissioners themselves made an examination of the property of the city so that they were in a position to exercise an intelligent judgment as to the value of the property, and if they fixed a value 15 per cent. less than the field men, I should say that they had given a sufficiently close inspection to qualify them to do so.

332 W. G. DAVIDSON, on behalf of complainant.

Direct examination by Mr. ANGELL:

Reside in Midland. Have been employed by tax commission as field examiner for over two years, previously in office county treasurer of Midland county a year, and have worked in the county clerk's office since twelve or fourteen years old, part of the time as deputy; am now twenty-nine. In my work in the county offices became familiar with the routine work in tax matters, having had occasion repeatedly to attend the meetings of the board of supervisors.

I have never been an assessing officer myself.

As field man my duties have been to examine real estate, fix values and compare assessments, and look over the rolls in general. I have worked in Sanilac, Huron, St. Clair, Macomb, Wayne, Menominee, Delta, Gladwin, Ogemaw and Clinton counties. Was in

Menominee county in July, 1902, with Mr. Rolph. We made a full examination in the city and some of the townships. In other townships not so good an examination, though we were in every township.

In Delta county we examined the city and certain townships, in some townships we worked together, and in others alone. From the report I could not state which townships I worked. I do not remember whether they were in my handwriting or Mr. Rolph's.

On these sheets (Delta County Report) there are certain sale properties and certain pickups. And we gave our own judgment of the value of the property, the verified considerations, and assessed value, and we also gave the assessed and actual value of the pickups.

"Q. Now will you state whether the figures which appear under those different headings of verified considerations and assessments were the correct figures as you found them to be.

333 Mr. TOWNSEND: I object to it as incompetent, and immaterial, the witness having testified that he did not know which townships he examined and some of them were examined by Mr. Rolph and some by him.

Q. I will add to the question this, if the question is not broad enough: So far as those figures bear upon townships which you yourself examined?

A. Well, I don't know as I examined a township alone in Delta county; I think I was in nearly every township, but Mr. Rolph was in some alone."

So far as I worked with Mr. Rolph the figures on these reports are made up of the results of our joint investigations and joint conclusions, and are the result of our honest findings of fact and of opinion.

(Mr. TOWNSEND: I object to that further as incompetent. This man cannot tell if it was the honest opinion of the other man or not.)

(Under the same objection by Mr. Townsend.) The figures entered in the columns headed "true value" expressed our honest judgment at the time as to the value; we acquainted ourselves with the facts and conditions before we formed our judgment, and had a record of the sales for a couple of years, and talked with real estate and lumbermen.

We discussed the values with the supervisor and assessing officers, and our conclusions were the result of all the facts acquired. We examined the different parcels of land on the pickup list, and verified the considerations of the sales by talking with the parties or one of the parties, and are still willing to stand by the report we made.

I worked the whole county of Clinton, with the exception of 3 or



4 townships (Bath, Victor, DeWitt). The manuscript you hand me are the field men's reports of Clinton county.

334 I have before me my sheet for the township of Bengal which I examined.

The pencil footings are not my own. I find that the totals of my report for the township of Bengal were correctly carried to the tabulation, Exhibit K.

Part of Clinton county examined by W. G. Davidson.

Township.	Sales.				Pickups.			
	No. ex.	As'd val.	Verf. con.	True val.	No. ex.	As'd val.	True val.	%
Bengal .....	18	\$37,350	\$51,700	\$49,850	54	\$142,240	\$192,500	73.9
Bingham .....	69	84,850	107,460	105,675	121	264,500	308,075	82.6
Dallas .....	28	42,100	60,725	58,825	65	145,900	187,625	77.8
Du Plain .....	37	40,725	55,555	55,605	67	114,350	153,505	74.5
Eagle .....	16	41,480	49,545	47,545	46	140,080	159,245	88.
Essex .....	20	42,530	58,750	57,650	49	132,380	173,940	76.1
Greenbush .....	21	22,230	33,825	33,825	52	94,820	136,975	69.2
Lebanon .....	22	36,775	45,982	44,950	63	142,700	174,050	82.
Olive .....	27	41,770	68,175	65,975	59	114,000	171,375	66.6
Ovid .....	64	91,350	110,992	110,992	105	219,500	262,792	83.5
Riley .....	23	43,400	59,900	57,975	53	118,250	155,975	75.8
Watertown .....	33	67,230	95,750	94,500	65	166,180	230,000	72.3
Westphalia .....	25	41,650	65,125	60,925	60	136,950	190,675	71.8

On some of the properties there was no value placed by me, or the considerations were simply verified, and I see that in the office they have put the verified consideration in as the true value.

The methods pursued in reaching values in the county of Clinton were the same as stated in reference to the county of Delta. I don't think that the value of most of the townships is considerably less than 75 % as that was a pretty good county.

As compared with other counties this county was pretty well assessed by the local assessing officers.

(Under objection by Mr. Townsend of incompetent, immaterial and hearsay.) There were a number of supervisors who thought they were assessing at cash value. Some of the others claimed, and some did not, that they attempted to put each piece of property at about the same percentage as every other piece.

I don't know that my investigations indicated that they were assessing at a relatively uniform per cent., some of them were trying to assess at cash value, and others were not. I believe they were trying to treat everyone alike, and that is generally true in the county of Clinton.

335 "Q. You didn't find, I infer, that any of them were assessing at full cash value from your report?

A. No, sir."

(Mr. TOWNSEND: That is objected to as leading.) I think the examination in Clinton county was more complete than in some of the other counties.

I was better satisfied with the results there than in some of the more difficult counties, and I exercised as good care and discrimination there as I knew how, or as I did in any county.

Cross-examination by Mr. TOWNSEND:

I did my work practically as Mr. Stone and Mr. Bibbins did. Did not get my pickups from the map. Got them sometimes before I saw the supervisor, while I was driving into the township, I would make the pickups or a part of them before I saw the supervisor or the assessment roll. After I saw the supervisor, I might take some off the roll and some off the map.

I found in looking it over that the supervisors were not assessing all their properties at the same rate, in the other counties mentioned I did not have so good an opportunity of looking them over as in Clinton county. The property that was examined was examined with the same care, but in this county there was more property examined. It makes a different estimate where you examine more property than where you examine less. It would not be possible to get a perfect valuation on any examination less than the whole.

Does not think the variation in percentage from 32% to 70% by the examination of more or less pieces, as found by Mr. Stone in Battle Creek, would exist in the county of Clinton, because in that county the property is assessed quite uniformly, and it could not have gotten as low as 32%. It might have been higher than found according to the number of pieces examined, but there would not be as much difference as that spoken of in Battle Creek.

336 Was satisfied that in a great many instances the supervisor did actually discriminate in assessing.

(Mr. ANGELL: I object to the question and move to strike it out and the answer also.)

I spent three days in a township, in some counties it would keep us busy driving to get through a township in three days, sometimes it was longer than that. As a rule we did not have a chance to get out and minutely examine properties but drove through the county and looked it over. I have gotten out of my rig to examine property, but as a general rule, did not.

Was a stranger to all the places where I made examinations. As a rule the supervisors are competent, honest men. There is no question but that a competent, intelligent, honest man, a resident of a township or assessing district, is more competent to assess property than a stranger, if he will use his judgment.

They never reduced my figures on a report that I made of a county. In my work in Port Huron they reduced my figures. This work was in 1902, when they made a general review of all property

of the city, and examined every piece,—after I had finished the commission lowered some of my figures. The examination carried on in Port Huron was similar to that in Clinton county, except that we did not examine every piece in Clinton county. Where we made examination of every piece in the city of Port Huron, the board concluded my valuations were too high.

Don't know as to the correctness of the sheets from which I called the numbers. (Evidently Exhibit K-1.)

When two of us worked together, sometimes one made a report and sometimes the other. After we sent it in to commission we knew nothing about it. I have looked them over previous to today, when I was interested in seeing whether the township was assessed up to the figures we made, or not. Aside from that I know nothing about these reports.

(Mr. TOWNSEND: I want to move, as I did before, to strike out the testimony of this witness as being incompetent, irrelevant and immaterial.)

#### Redirect examination:

I think the supervisors on the whole were fit to assess property if they used their best judgment. The reason they were not assessing at cash value was that each supervisor was looking after his own town, trying to get it equalized low. He didn't want to get it higher than his neighbor.

338

#### Afternoon's Proceedings.

HENRY W. MAGOON being called as a witness on behalf of the complainants and being first duly sworn by the examiner to tell the truth, the whole truth and nothing but the truth testified as follows:

#### Direct examination by Mr. BUTTERFIELD:

Q. Where do you reside?

A. Boyne city, Michigan.

Q. How long have you resided in Boyne city?

A. About sixty days.

Q. Where did you reside previous to that time?

A. In Manistee.

Q. For how long had you resided there?

A. Oh, for about twelve years.

Q. What is your age?

A. 45.

Q. While you were residing in Manistee what was your business?

A. I was general office manager for Louis Sands.

Q. What is Louis Sands' business?

A. Louis Sands is a lumberman; he is a lumber and salt manufacturer.

Q. Does Louis Sands own and operate a railroad?

A. Yes sir.

Q. Please state the termini of the railroad.

A. The western end of it is at the Manistee river, what is known as jam-one, about twelve or thirteen miles from Kalkaska and it extends easterly to perhaps twenty-five miles into the timber in Kalkaska county.

Q. That railroad was in existence and in operation on the second Monday in April, 1902?

A. Yes sir.

339 Q. And how long had it been in operation if you know before that time?

A. They began operating it in 1896 I think.

Q. What is the construction of the railroad—how is it constructed, of what kind of rails?

A. Principally twenty-five to thirty pound steel rails.

Q. A T-rail?

A. Yes sir.

Q. And what is the gauge?

A. 38 inches.

Q. And the ordinary tie construction I suppose?

A. Yes sir.

Q. In other respects does it differ from the ordinary standard gauge railroad in its form of construction?

A. No sir, only that it is narrow and lighter rails; the general construction is the same.

Q. Has it switches and sidetracks?

A. Yes sir.

Q. Does it cross any other railroad?

A. It crosses the Kalkaska branch of the Pere Marquette, what is known as the Grand Rapids, Kalkaska and Southeastern, I think that is the name.

Q. I suppose it has no physical connection, being a different gauge?

A. No sir.

Q. How is the crossing operated, by an interlocker or by the flagging of trains and stopping?

A. Well sir, I don't know as to that; I think, however, that there is no interlocker; I think that the Sands logging trains always stop.

Q. The Pere Marquette has the right of way?

A. Yes sir.

340 Q. What sort of equipment has that road?

A. Wee, it has engines.

Q. How many engines?

A. Three.

Q. And how many cars?

A. Why, in the neighborhood of 50 or 60 logging flats, to my recollection.

Q. Has it any cabooses or way cars?

A. No sir.

Q. Any box cars?

A. I think there are two or three box cars.

Q. Does Mr. Sands carry freight on that railroad for other persons or corporations?

A. Well sometimes he does.

Q. Did he in the year 1902, if you know, carry freight for others?

A. Well I presume he did a little, yes sir. I could not say positively.

Q. What was the character of the freight, if any, carried for other people?

A. It would be in the nature of camp supplies, hay and grain and provisions and things of that kind.

Q. Were any forest products transported for others?

A. Yes sir; bark and some logs.

Q. Are you in any doubt about the logs and bark being carried in 1902 to some extent?

A. No sir.

Q. You know they were carried?

A. No sir.

Q. What you mean to be in doubt about is the camp supplies?

A. The camp supplies going up.

Q. Does he have a regular schedule of rates for transportation of freight?

A. No sir.

Q. How is the compensation regulated?

A. Well, it is made the subject of special bargain in each individual case.

Q. Are there any towns along the line of the road?

341 A. No sir.

Q. No settlements except lumber camps?

A. That is all. It may possibly pass a farm house or something of that kind.

Q. Does he, as a matter of fact, carry upon that railroad everything in the way of freight that is offered for transportation that they have any occasion to carry?

A. Yes sir; they try to secure whatever business can be secured at reasonable rates, no special efforts being made, however, to solicit it, it comes to them.

Q. Does he carry any passengers at all?

A. Well simply men who are going back and forth between the camps, they ride in the logging cars sometimes.

Q. Are there any camps there that are not owned by Mr. Sands—I take it there are.

A. Yes sir.

Q. He carries on his railroad not only men going to his own camps, but other camps.

A. That I could not say positively, but I presume that is true.

Q. Does he collect fare from passengers?

A. No sir.

Q. No charge whatever is made for passengers carried?

A. No sir.

Q. Mr. Sands in this business of operating a railroad has no partner or associate whatever?

A. No sir.

Q. He is the sole proprietor?

A. Yes sir.

Q. Where does Louis Sands live?

A. Manistee.

Q. And that was the condition of things in 1902 on the second Monday in April?

A. Yes sir.

342 Cross-examination by Mr. WYKES:

Q. You are not now employed by Mr. Sands?

A. No sir.

Q. Your employment terminated when?

A. August 1st.

Q. Where are you employed now?

A. I am at Boyne city, Michigan

Q. In what business?

A. I am in the lumber business, I am the manager of the Boyne City Lumber Company.

Q. Is Mr. Sands interested in the Boyne City Lumber Company?

A. No sir.

Q. You had general charge of Mr. Sands' business while you were with him?

A. Yes sir.

Q. Now this railroad is through unsettled territory entirely, is it not—and I mean by unsettled territory, territory without settlements?

A. Without cities or villages?

Q. Yes sir, without cities or villages or small towns.

A. Yes sir.

Q. And practically through the woods?

A. Yes sir.

Q. One terminus is at the Manistee river?

A. Yes sir.

Q. And there is no settlement there?

A. No sir; there is simply a postoffice and a store there.

Q. The cars simply stop there to dump the logs into the river

A. Yes sir.

Q. The other terminus is in Mr. Sands' own forest?

A. Yes sir.

Q. Now this road was built, was it not, for the sole purpose of carrying forest products for Mr. Sands himself?

A. That was the primary object of it yes sir.



343 Q. It was not built for the purpose of carrying freight or passengers for any one else?

A. Well of course he contemplated that he would go through other timber and it would naturally come to him.

Q. The idea was then that if there was any other timber cut it would assist him in paying the expenses of maintaining this road during the time it was maintained, that is what you mean?

A. Yes sir.

Q. But he did not build it for the purpose of continuing it after his logs were taken off as a railroad?

A. No sir.

Q. And that was his intention and is his intention at the present time?

A. So far as I know.

Q. To take that road up?

A. To take it up.

Q. When his own logs and the logs that he can purchase in that vicinity are taken off?

A. Yes sir; unless he should possibly find other timber; if there was a large group of timber and he could contract to haul it, and it would pay him to leave it there, I suppose he would.

Q. That would simply aid him in taking care of the expenses that it cost him to put the road there.

A. Yes sir.

Q. But he does not intend to go into the railroad business?

A. No sir.

Q. Now has this road been stationary during the 10 or 11 or 12 years that you have been connected with Mr. Sands—hasn't it been moving from place to place?

A. Yes sir.

Q. Where has he operated it?

344 A. In the Missaukee county from about 1891 to 1895 or 1896.

Q. Then the entire road was taken up.

A. Yes sir.

Q. And moved into its present location?

A. Into Kalkaska county, yes sir.

Q. And that was in 1896 you say?

A. Yes sir.

Q. From 1896 to the present time it has been engaged in carrying the forest products from this particular forest?

A. Yes sir.

Q. The road bed has not been the same during all that time?

A. The main line has been the same, but the branches are taken up and built new as the timber is cleared off; where they clear off one section of land they would take up the branches and lay them into other sections.

Q. He moves the branches then?

A. Yes sir.

Q. To suit his own business?

A. Yes sir.

Q. That is, his own logging business?

A. Yes sir.

Q. Then taking into consideration the character of the location, would you say that this road was adapted for carrying on a railroad business?

A. Not in a broad sense.

Q. Is it adapted for carrying passengers, in its present location?

A. No sir, I should say not.

Q. And for freight nothing but the forest products that are adjacent to it?

A. That would be all.

Q. And when this timber is off the present necessities of a railroad or a logging road in that location would be gone?

A. Yes sir.

Q. Do you know of any instance of carrying passengers over this road?

345 A. I do not.

Q. For hire?

A. No sir.

Q. If there had been any receipts from passenger business you would have known it?

A. Yes sir.

Q. And there were none?

A. There were none.

Q. Now as to the amount of freight: You have stated that the freight was limited to bark and a few other forest products?

A. Yes sir.

Q. And camp supplies?

A. Yes sir.

Q. Do you know anything of the receipts for that business?

A. I do not.

Q. Could you approximate it?

A. It would be a mere guess. During what period?

Q. If you can approximate it I will give you the years. During the year 1900?

A. Well I couldn't do it.

Q. You could not approximate it during the year 1900?

A. No sir.

Q. During the year 1899?

A. No sir.

Q. Or 1902?

A. No I could not. I couldn't give any idea it might possibly amount to a thousand dollars during the year and it might be two thousand.

Q. That was made the subject of special contract?

A. Yes sir.

Q. In each instance?

A. Yes sir.

Q. Now isn't it true that Mr. Sands did not hold himself out as a carrier of passengers and freight generally?

A. Yes sir, it is true that he did not.

346 Q. And when this road is taken up the material in it will either be sold as scrap iron or be devoted to the same use in some other location by Mr. Sands or sold to some other company for substantially this purpose?

A. Yes sir.

Q. Can you give me the value of this road approximately?

A. I could give it from memory of course. The construction account stands on Mr. Sands' books, I haven't seen those books for 60 days and it would be simply from memory.

Q. That is sufficient. Give your best recollection of what the road cost.

A. As near as I can remember the construction account stands from 70 to \$75,000 on Mr. Sands' books.

Q. And isn't it true that you made an affidavit that that road was worth substantially 40 to 45,000 dollars allowing for depreciation?

A. I think that would be a fair valuation of it.

Q. It would not exceed that?

A. I don't think so.

Q. But the first cost could not exceed \$75,000?

A. I think it didn't. I would not say that it couldn't.

Q. It is a fact it didn't exceed that?

A. It didn't. I say 75,000, it may be 76, or 78, you know.

Q. But from 70 to 75?

A. That is my recollection of the account as it stood upon the books.

Q. Do you know how near the timber is lumbered up in the neighborhood of this road?

A. I do not.

Q. Now, the road you have said is not standard gauge?

A. No sir.

347 Q. It has no physical connection with the railroad that it crosses?

A. No sir, any more than a side track running alongside of it.

Q. And the Sands road runs its trains subject to the Pere Marquette, that is, it makes the stop?

A. Yes sir.

Q. And it is impossible to interchange cars from one road to the other?

A. Yes sir.

Redirect examination by Mr. BUTTERFIELD:

Q. But do they, as a matter of fact, interchange freight on this side track you speak of—this side track running alongside of the

Pere Marquette is, I take it, for the transfer of freight from the Sands road to the Pere Marquette road?

A. Yes sir.

Q. Is it used to a considerable extent in that way?

A. To quite a considerable extent.

Q. I suppose in your experience as a lumberman and a manager of lumber business you have been in the woods on a good many logging roads, haven't you?

A. Yes sir.

Q. Have you ever been in the woods on any logging branches running off the Jackson, Lansing & Saginaw road?

A. I have not, no sir.

Q. Or running off the C. R. & I.—or where have you been on branches of other railroads?

A. I have been on the Cummer & Diggins road that used to be operated in east of Cadillac, and the Mitchell road and the Sands road, operated there; those three were close together.

348 Q. Was the Mitchell road a branch of any other road?

A. No sir that was a narrow gauge.

Q. Like the Sands road?

A. Yes sir.

Q. When did that cease to do business?

A. It is still in operation, it is in operation now.

Q. Do you know what the organization of the Mitchell Company is—is it a corporation?

A. I don't know, no sir.

Q. It is a custom, is it not, of all managements of logging branches of railroads to shift the branches from time to time to accommodate the traffic in the woods?

A. Yes sir.

Q. And I suppose it is the custom of railway management in general to take up a branch when it ceases to be useful.

A. Yes sir.

Q. And I suppose, so far as you know, if some great discovery of mineral wealth should be made at the terminus of the Sands road before the timber is taken out and a city should grow up there, it would not be very likely to be taken up, would it?

A. I should think not.

Mr. WYKES: We object to that as speculative.

Q. In other words, from what you know of Mr. Sands' plans I take it his plan is to use the road as long as it is a useful and profitable one, and when it ceases to be profitable or useful, to take it up.

A. That would be the natural conclusion.

Mr. BLAIR: We object to a natural conclusion of that character.

349 Q. Do you know whether there are any railroad companies, regularly organized railroad corporations in this State that

have moved, not only their branches, but their main line from one place to another within the last few years.

A. I don't know of any.

Mr. WYKES: I object to it as immaterial.

Q. Do you know that the Michigan Central, for instance, is at present building 12 miles of new double track railroad some of which is more than a mile from its present main line between Kalamazoo and Mattawan?

A. No sir, I don't.

Q. How long has the Mitchell Bros. road been in operation—what county did you say it was in?

A. Missaukee.

Q. How long has that been in operation, if you know?

A. I don't know.

Q. Was it in operation prior to 1902?

A. Oh yes sir; it was in operation in 1891 when I went to Lake City first for Mr. Sands, and it has been in operation continuously since that time, I know.

Q. What are the termini of that road?

A. Why the mill at Jennings, a small village east of Cadillac is the western terminus, and I don't know just the present eastern terminus of the road, except somewhere in their timber I suppose.

Q. In the woods?

A. In the woods.

Q. Do you know its length?

A. I do not.

Q. Well approximately—does it exceed 25 miles?

A. I should think it does. I should think somewhere from 25 to 30 miles.

350 Q. Is it built substantially like the Sands road?

A. Yes sir.

Q. Narrow gauge you say?

A. Yes sir.

Q. Three foot, two?

A. I think theirs is three foot exactly.

Q. And are there any towns on the line of the Mitchell Brothers road?

A. None that I know of.

Q. Except Jennings, which is their mill?

A. Yes sir.

Q. What connection has it with other railroads, if any?

A. None except that a branch of the C. R. & I. goes into Jennings.

Q. And there they transfer?

A. They transfer I presume.

Q. Do you know whether the Mitchell Brothers carry freight for others?

A. I don't positively, no sir. I think they do.

Q. Do you know whether they carry passengers or not?

A. I do not.

Q. What was the other road you mentioned in that vicinity there?

A. Cummer & Diggins, the Cummer Lumber Company.

Q. What is the style of the Mitchell Brothers business name do you know—is it Mitchell Bros. simply or the Mitchell Bros. Lumber Company?

A. Well I think it has recently been incorporated, during this last year, during 1903, it was Mitchell Bros. until sometime in this present year it was incorporated and it is called the Mitchell Bros. Lumber Company.

Mr. WYKES: We object to that. If it is incorporated it can be shown by better evidence.

Q. Prior to the year 1903 they were partners?

A. Yes sir.

Q. The Cummer Lumber Company is the other?

A. Yes sir.

351 Q. What are the termini of that road?

A. Well that road was taken up several years ago.

Q. It was not in operation in 1902 then?

A. No sir.

Q. Do you know of any other railroads of the kind you have been describing that are not operated by railroad companies?

A. The Manistee Lumber Company owned one in Kalkaska county near Mr. Sands' road.

Q. Is that a narrow gauge road?

A. Yes sir.

Q. A three foot gauge?

A. Yes sir.

Q. Is it built substantially like Sands' road?

A. Yes sir.

Q. How many miles long is that approximately, if you know?

A. 15 to 20.

Q. What are its termini?

A. Manistee river is the western terminus and it runs out into the woods into their timber.

Q. Do you know whether any freight is carried upon that road for other people?

A. I do not.

Q. Do you know whether they carry passengers or not?

A. I do not.

Q. Do you know the extent of its equipment?

A. I do not.

Recross-examination by Mr. WYKES:

Q. Who are the officers of the Manistee Lumber Company?

A. James Dempsey is president and I think William Wente is



secretary and treasurer, I don't know whether he is both combined or not, but I think he is secretary and treasurer though.

Q. Do you know that the Manistee Lumber Company has  
352 been taking steps to organize under the general railroad law recently?

Mr. ANGELL: We object to it as immaterial.

A. I don't know that.

Q. You don't know that it is now organized under the general law?

A. No sir.

Q. You don't know that it is at present organized as the Crawford & Manistee River Railroad Company?

A. No sir.

Q. And is assessed under the law for the assessment of railroad companies by the State board of assessors?

A. No sir.

Mr. BUTTERFIELD: Was it assessed in 1902?

Mr. WYKES: In 1902.

Q. You have spoken of the Mitchell Bros. road in Missaukee county; have you ever been on the line of this road in Missaukee county?

A. Yes sir.

Q. Recently?

A. No sir.

Q. When?

A. Well I was over it frequently from 1891 to 1896 while I was living at Lake City.

Q. Do you know that it is still operated at the present time?

A. Yes sir.

Q. The Cummer & Diggins road you say has been taken up?

A. Yes sir.

Q. Where did you get your information that they were carrying freight or passengers?

A. Who?

Q. The Mitchell Brothers road?

A. I didn't say that they were.

Q. You said you didn't know, I thought you said you thought they were?

A. No sir, I don't know.

353 Q. You have no knowledge that they are carrying freight or passengers or doing any other business than carrying their own products?

A. No sir.

Mr. ANGELL: Do you admit that the book produced by the defendant is the original annual report of the Lake Shore & Michigan Southern Railway Company to the State board of assessors for the State of Michigan made in the year 1902.

Mr. TOWNSEND: Yes sir.

Mr. ANGELL: On behalf of the Lake Shore & Michigan Southern Railway Company I desire to offer in evidence a portion of this report found on page 31:

"Current Assets and Liabilities.

Cash and current assets available for payment of current liabilities:

Cash .....	\$937,735.89
Bills receivable.....	248.02
Due from agents .....	789,004.57
Due from solvent companies and individuals.....	779,850.34
Net traffic balances due from other companies.....	53,925.74
Other cash assets excluding materials and supplies....	79,192.18
Materials and supplies on hand .....	1,116,064.46

354 Total cash and current assets.....	2,639,965.74
Balance current liabilities.....	8,198,950.13

Total ..... 10,838,906.87

Current liabilities accrued to and including April 14, 1902:

Receivers' certificates.....	None.
Loans and bills payable.....	5,250,000.00
Audited vouchers and accounts.....	2,792,484.87
Wages and salaries.....	922,368.42
Net traffic balances due to other companies.....	000,000
Dividends not called for.....	1,773,935.55
Matured interest coupons unpaid including coupons due April 14.....	34,956.24
Rents due April 14.....	65,161.79
Miscellaneous .....	None.

Total current liabilities..... 10,838,906.87

Mr. BUTTERFIELD: I desire to read from the house journal of the legislature of this State the extra session from October 10 to 15th in the year 1900, on page 14 of that document, a portion of the governor's message.

Mr. TOWNSEND: I object to it as incompetent and immaterial.

Mr. BUTTERFIELD: It reads as follows:

"The following is a table showing:

1. The full value of the tangible property of the Ann Arbor  
355 railroad and the Detroit, Grand Haven & Milwaukee railroad  
made by Professor Cooley.

2. 65% of the full value of the tangible property.

3. Amount of taxes paid for year 1899 under the present law bearing earnings.

4. The actual rate of taxation as based upon the valuation of the tangible property (at 65% of the full cash value of the tangible property) that is now being paid under the system of taxation upon earnings.

5. Amount of taxes which the railroads would pay at 2% of the valuation of the tangible property (at 65% of the full cash value) and this amount of taxes which the railroads would pay at 2% of the full value of the tangible property. In these comparisons I use 65% of the full cash value because that is the average of assessment throughout the State according to a computation made by a member of the State board of tax commissioners; the average rate of taxation in the State is nearly 2½% (also computed at a member of the tax commission) but I have used 2% in showing what taxes these railroads should pay if they were assessed upon cash value at the same proportion of full value, namely 65%, as other property in the State is assessed, and at the same rate as other property in the State is taxed.

The official computation of the tax commission upon these two points may be completed before this session ends.

356 B. F. BURLASS, on behalf of complainant.

Direct examination by Mr. BUTTERFIELD :

Reside in Manchester, Washtenaw county; employed as clerk by the tax commission, age 26. I have verified the figures contained in Exhibits H-1, I, N, K-1, T and W, being tabulated summaries for Montcalm, Shiawassee, Calhoun, Clinton, Delta and Oakland counties.

(Objection by Mr. Townsend of incompetent, immaterial and irrelevant.)

Have computed the percentage of assessed to actual value on the totals of the pickups and sales combined, on all counties except Calhoun, and Oakland is nearly completed.

(Same objection by Mr. Townsend.)

The sheets are, after correction of errors found, now correct abstracts of the reports of the field examiners as they appear among records of State tax commission. I have found errors which affect percentage in Bingham township in Clinton county, this sheet showed no pickups, and I found 52 pickups, which would change the percentage from 80.3 to 82.6.

The township of Watertown in the same county is changed from 72.4 to 71.1 %.

At the review held at Marshall this year, the supervisor of Convis township introduced a few sales that the commissioner decided to put in here which changed the per cent. somewhat. The same applies to the township of Homer, same county. Other than what

has been said, these exhibits to the best of my knowledge and belief are absolutely correct.

Mr. BUTTERFIELD: I reoffer Exhibits H-1, I, N, K-1, T and  
357 W in evidence.

(Mr. TOWNSEND: I object for the reasons before stated.)

These tables are based on the report of the field men for 1902. At the review in 1903 there were additional sales put in.

358 Proceedings of Wednesday, October 28th, 1903.

J. N. O'BOYLE being called as a witness on behalf of the complainants and being first duly sworn by the examiner to tell the truth, the whole truth and nothing but the truth testified as follows:

Direct examination by Mr. ANGELL:

Q. Where do you reside?

A. Cleveland, Ohio.

Q. What is your business?

A. Well, I am connected with the Lake Shore road; I suppose you may call it the position of chief clerk in the audit department.

Q. Chief clerk in the auditor's department?

A. Yes sir.

Q. How long have you been connected with the auditor's department of the Lake Shore road?

A. Well, since 1891.

Q. Have you become familiar with the proprietary lines that are operated by the Lake Shore Company?

A. Yes sir.

Q. Do you know what they are?

A. Yes sir.

Q. Does the Lake Shore manage, operate and control the railroad of the Detroit, Hillsdale and Southwestern Company?

A. Yes sir.

Q. Is the same thing true of the Detroit, Monroe and Toledo Rail Road Company?

A. Yes sir.

Q. And of the Fort Wayne and Jackson Rail Road Company?

A. Yes sir.

Q. And of the Kalamazoo, Allegan and Grand Rapids Rail  
359 Road Company?

A. Yes sir.

Q. And of the Kalamazoo and White Pigeon Rail Road Company?

A. Yes sir.

Q. And of the Northern Central Michigan Rail Road Company?

A. Yes sir.

Q. And of the Detroit and Chicago Rail Road Company?

A. Yes sir.

Q. Of the Sturgis, Goshen and St. Louis Rail Road Company?

A. Yes sir.

Q. Of the Detroit, Toledo and Milwaukee Rail Road Company?

A. Yes sir.

Q. Does the rail road property of each of the companies named include real estate within the State of Michigan?

A. Yes sir.

Q. To a considerable extent in each case?

A. Yes sir.

Q. Are you acquainted with the counties through which the line of either the Lake Shore Company itself or the lines of these various subordinate companies pass so that if I read you a list you could tell whether that was correct or not?

A. Yes sir.

Q. Whether you could recite it?

A. No sir, I could not recite it.

Q. I will give the counties to you and ask you a question: Will you state whether the rail road properties of the companies you have just named in your prior answers, and of the Lake Shore and Michigan Southern Rail Road Company itself lie in some one or more of the following counties; namely: The counties of Monroe, Lenawee, Hilldale, Branch, St. Joseph, Kalamazoo, Allegan, Kent, Calhoun, Jackson, Washtenaw, Wayne, Ingham, Barry and Eaton?

A. Yes sir.

Q. During January 1903 and the months immediately before that will you state whether notices as to tax matters in Michigan passed through your office and through your hands?

A. Yes sir, they did.

Q. Will you state whether between the 12th of January 1903 and the 16th of January of the same year you received any notice of any kind whatever from the State board of assessors or any of its agents?

A. Between the 12th and the 16th?

Q. Yes sir?

A. I remember that we got quite a batch of correspondence from them advising of the assessments that had been made.

Q. Was that during those dates or before or after?

A. Well, it was prior to that.

Q. Confine your answer to the dates I mentioned?

A. No, I didn't receive any.

Q. Did you receive any advise from any one until after the 16th of January that the assessment of the various companies named had been increased from its original figure by the net sum of one million of dollars?

A. No, sir.

Q. Did you in fact know that such increase had been made by the State board from the figures as given to you?

A. No, sir.

Q. Until after the 16th of January ?

A. No sir.

Q. Between the dates already named, the 12th to the 16th of January state whether you received any notice of an opportunity to be heard upon the question of any increase by the State board of tax assessors?

361 board of tax assessors?

A. No sir.

Q. Referring to the Lake Shore Company and the subordinate companies whose names I have already read you may state what if any arrangement exists whereby the Lake Shore Company has anything to do with the payment of taxes levied upon the subordinate companies?

A. What they have to do with it?

Q. Yes sir?

A. They pay them.

Q. That is the custom?

A. Yes sir that is the custom.

Q. Is there any agreement that you know of to that effect between the companies?

A. Yes sir; it is provided for in the lease.

Cross-examination by Mr. WYKES:

Q. You spoke of some agreements between the Lake Shore and these subsidiary roads?

A. Yes sir.

Q. Those agreements are in writing, are they not?

A. Yes sir.

Q. Have you them with you?

A. Yes sir.

Mr. BLAIR: We wish to have it understood that after copies have been furnished to us, printed or type written of these leases between the Lake Shore and these subsidiary lines that we may offer such portions of them as we deem to be material as a part of the cross-examination of Mr. O'Boyle and in case it should turn out that in any of these leases the covenants to pay the taxes on the subsidiary lines are omitted that Mr. Angell need not upon that account file a separate bill for that particular line but that particular line may be deemed to be included under the bill of the main line of the Lake Shore.

362 Mr. ANGELL: That is all-right.

Q. Now you spoke generally of these roads as proprietary roads; what did you include under that term and what did you mean by it?

A. Well, from a rail road standpoint if a rail road company owns the stock of another road and operates that property they call it a proprietary road.



A. Yes sir.

Q. Of the Sturgis, Goshen and St. Louis Rail Road Company?

A. Yes sir.

Q. Of the Detroit, Toledo and Milwaukee Rail Road Company?

A. Yes sir.

Q. Does the rail road property of each of the companies named include real estate within the State of Michigan?

A. Yes sir.

Q. To a considerable extent in each case?

A. Yes sir.

Q. Are you acquainted with the counties through which the line of either the Lake Shore Company itself or the lines of these various subordinate companies pass so that if I read you a list you could tell whether that was correct or not?

A. Yes sir.

Q. Whether you could recite it?

A. No sir, I could not recite it.

Q. I will give the counties to you and ask you a question: Will you state whether the rail road properties of the companies you have just named in your prior answers, and of the Lake Shore and Michigan Southern Rail Road Company itself lie in some one or more of the following counties; namely: The counties of Monroe, Lenawee, Hillsdale, Branch, St. Joseph, Kalamazoo, Allegan, Kent, Calhoun, Jackson, Washtenaw, Wayne, Ingham, Barry and Eaton?

A. Yes sir.

Q. During January 1903 and the months immediately before that will you state whether notices as to tax matters in Michigan passed through your office and through your hands?

A. Yes sir, they did.

Q. Will you state whether between the 12th of January 1903 and the 16th of January of the same year you received any notice of any kind whatever from the State board of assessors or any of its agents?

A. Between the 12th and the 16th?

Q. Yes sir?

A. I remember that we got quite a batch of correspondence from them advising of the assessments that had been made.

Q. Was that during those dates or before or after?

A. Well, it was prior to that.

Q. Confine your answer to the dates I mentioned?

A. No, I didn't receive any.

Q. Did you receive any advise from any one until after the 16th of January that the assessment of the various companies named had been increased from its original figure by the net sum of one million of dollars?

A. No, sir.

Q. Did you in fact know that such increase had been made by the State board from the figures as given to you?

A. No, sir.

Q. Until after the 16th of January ?

A. No sir.

Q. Between the dates already named, the 12th to the 16th of January state whether you received any notice of an opportunity to be heard upon the question of any increase by the State

361 board of tax assessors ?

A. No sir.

Q. Referring to the Lake Shore Company and the subordinate companies whose names I have already read you may state what if any arrangement exists whereby the Lake Shore Company has anything to do with the payment of taxes levied upon the subordinate companies ?

A. What they have to do with it ?

Q. Yes sir ?

A. They pay them.

Q. That is the custom ?

A. Yes sir that is the custom.

Q. Is there any agreement that you know of to that effect between the companies ?

A. Yes sir ; it is provided for in the lease.

Cross-examination by Mr. WYKES :

Q. You spoke of some agreements between the Lake Shore and these subsidiary roads ?

A. Yes sir.

Q. Those agreements are in writing, are they not ?

A. Yes sir.

Q. Have you them with you ?

A. Yes sir.

Mr. BLAIR : We wish to have it understood that after copies have been furnished to us, printed or type written of these leases between the Lake Shore and these subsidiary lines that we may offer such portions of them as we deem to be material as a part of the cross-examination of Mr. O'Boyle and in case it should turn out that in any of these leases the covenants to pay the taxes on the

362 subsidiary lines are omitted that Mr. Angell need not upon that account file a separate bill for that particular line but that particular line may be deemed to be included under the bill of the main line of the Lake Shore.

Mr. ANGELL : That is all-right.

Q. Now you spoke generally of these roads as proprietary roads ; what did you include under that term and what did you mean by it ?

A. Well, from a rail road standpoint if a rail road company owns the stock of another road and operates that property they call it a proprietary road.

Q. How many of those roads does that condition exist in regard to—it does not exist as to all of them?

A. I think in every one, in every case without an exception.

Q. Now you said notices as to tax matters pass through your hands?

A. Yes sir.

Q. Is that the invariable rule?

A. Well, it depends entirely on how they are addressed; if they are addressed to us we generally get them for us to make a record of, and even if they are addressed to some other department they would come to us.

Q. Wouldn't it be possible for your company through its attorney or through some other officer to receive one of these notices without its coming to you?

A. Yes sir it would be barely possible but if it was something as I say that in any way pertained—one department is familiar with the duties of another one and very often a letter is misaddressed and it is referred to that department without sending it back to the original sender.

Q. It is possible for a notice to be given and you not see it personally?

A. Yes sir it is possible.

Q. Do you know the date on which this million and some odd dollars took place?

A. No sir.

Q. You don't know the date?

A. No sir.

364      GODFREY JAEGER being called as a witness on behalf of the complainants and being first duly sworn by the examiner to tell the truth, the whole truth and nothing but the truth testified as follows:

Direct examination by Mr. ANGELL:

Q. Where do you reside?

A. I live in Cleveland, Ohio.

Q. What is your business?

A. I am the tax agent for the Lake Shore and Michigan Southern Railroad Company.

Q. What are your duties?

A. Well, everything pertaining to the taxes of all the properties of the company; I make the vouchers for all taxes and pay the most of them.

Q. Does that apply to all of the lines, the operated lines as well as to the original line?

A. Yes sir, all the properties of the company, everything they operate.

Q. Were you at Lansing on January 12th 1903?

A. Yes sir I was at Lansing January 12th.

Q. What were you doing there?

A. Well I was there with the company's counsel to make a statement to the State board of assessors.

Q. With reference to what?

A. With reference to the appraisement that had been made; we were endeavoring to show that the appraisement was too high; I understand that was our main business there.

Q. Do you remember the figure at which that appraisement stood that day?

A. Yes sir.

Q. What was it?

A. Seventeen million dollars for the aggregate for the Lake Shore and its subsidiary lines.

365 Q. Do you recall the interview that was had between you and the counsel you spoke of and the State board with any degree of clearness?

A. Pretty clearly, yes sir.

Q. About how long did the interview last?

A. Well, I should think it was one or two hours—about two hours.

Q. What if anything at that time during that interview was suggested by the State board as to an increase in the assessed valuation?

Mr. WYKES: We object to this; what was said there is shown by the type-written transcript of the proceedings.

A. There was no suggestion made; in fact we had great hopes of having a reduction, and were very much surprised when we found we didn't get it.

Q. When did you learn you did not get a reduction but got an increase of a million of dollars?

A. Well, some three or four days after our hearing before the board.

Q. Through what medium did you get that knowledge?

A. Well I think I saw it in some paper, and I am under the impression we had a telegram—I had a telegram from Mr. Hammond our attorney at Lansing that we had been raised another million.

Q. Between the time of your interview with the State board on the 12th. and the day of your receiving from Mr. Hammond or the newspapers the news you have spoken of will you state whether you had had any intimation of any kind whatever that the board proposed to increase the valuation?

A. No sir, we had none.

366 Q. Did you have any notice of any nature whatsoever from any source to come there and show cause against such an increase?

A. No sir.

Q. How long have you been in the tax department of the complainant?

A. Thirteen years, or it will be at the close of the year; I began the first of January 1891.

Q. Have you acquainted yourself with the gross earnings of the Lake Shore Company and its different subordinate companies mentioned in this bill for the year 1902?

A. Yes sir.

Q. Have you also acquainted yourself with the assessed value as finally fixed by the State board of assessors upon these various companies?

A. Yes sir.

Q. Have you made a calculation to see what per cent. of the gross earnings for the year 1902 this tax on these companies would amount to?

A. Yes sir.

Q. Will you state what it was?

MR. WYKES: We object to it as incompetent, irrelevant and immaterial.

Q. I made a computation upon the earnings of 1901.

Q. 1902 is the one that I call your attention to?

A. All right, sir. The amount of taxes assessed on what I call the main line of the Lake Shore and Michigan Southern railway amounted to 11.42 per cent. of its gross earnings in Michigan, the Detroit and Chicago 23.71 per cent.; the Detroit, Hillsdale and Southwestern 22.85 per cent.; the Detroit, Munroe and Toledo 9.66 per cent.; the Fort Wayne and Jackson 13.83 per cent.; the Kalamazoo, Allegan and Grand Rapids 10.09 per cent.; the Kalamazoo and White Pigeon 10.95 per cent.; the Sturgis Goshen 367 and St. Louis 30.72 per cent.; the Detroit, Toledo and Milwaukee 13.04 per cent.

Q. Have you computed the Northern Central Michigan, is that on your list there?

A. Yes sir I thought I gave it; 11.95.

Q. Look at your schedule opposite Kalamazoo and White Pigeon and see what the percentage is?

A. The Kalamazoo and White Pigeon is 9.74. Do you want the average?

Q. Yes sir?

A. 11.37 per cent.

Q. Of the lines in Michigan which if any in the year 1902 made any net earnings?

A. The Detroit, Monroe and Toledo made a net earning.

Q. About what per cent. of its net earnings has its taxes equalled?

A. About fifty per cent.

Q. I call your attention to the printed bill of complaint in this case which under paragraph 13 gives certain percentages similar to those you have just given?

A. Yes sir.

Q. Is that for the year 1902?

A. That should be 1901—as compared to the earnings of 1901.

Q. Did you make the computation which is contained in the bill?

A. I did.

Q. And there is a misprint in the bill, those figures refer to 1901?

A. Yes sir the earnings of 1901.

Q. Whereas the figures you have just given refer to 1902?

A. Yes sir, the calander year which is the company's fiscal year.

Q. At the time that this bill was prepared in June had you or had you not data before you sufficient to make that computation you have just given?

A. I may have made the computation before that time; at 368 that time I didn't have the earnings for 1902.

Q. In preparing the bill the solicitor should have stated 1901 instead of 1902?

A. Yes sir.

Q. The figures you have just given are now checked from the accurate figures for 1902?

A. Yes sir.

Q. With reference to notices about tax matters that come to the Lake Shore and Michigan Southern Railway Company; will you state whether or not such noticed to whomsoever originally addressed come to your hands ultimately?

A. Yes sir, they invariably do. Sometimes they are addressed to the auditor's office, and sometimes to the general manager and frequently to the engineer's office but they are always sent to my office.

Cross-examination by Mr. WYKES:

Q. Now you appeared before this board on the 12th of January?

A. Yes sir.

Q. Do you know whether the board continued in session up to the 16th of the month?

A. I don't know but I was told that at the time when we got the information of the increase that the books were closed.

Q. That was on the 15th or after though?

A. Yes sir; within three or four days of the day I was at Lansing.

Q. The board did continue in session for a number of days after you were there?

A. Several days I understood.

369 Q. Now, do you know the method by which the earnings of your roads are distributed among the several branches?

A. No, I do not.

Q. Did you personally compute those percentages?

A. Yes sir.

Q. Could you compute those percentages without knowing?



A. I got the information from our auditor's office of the earnings, and then it was a very simple matter to compute the percentage or ratio that the tax bore to the earnings.

Q. You know nothing whatever of the method of division?

A. No, I don't know how the auditor's office divides the earnings; they furnish me with a statement which of course is necessary; I have always computed the taxes under the old law on the earnings.

Q. Now, have you with you a statement of the earnings?

A. Yes sir.

(Witness presents paper to counsel.)

Q. Then you don't know that this is a true apportionment or that there is a true apportionment of the gross earnings in Michigan?

A. I know nothing about it only what the auditor's office furnishes me.

Q. Then you don't know except as your computation is based on the computation of somebody else or upon the arbitrary division of somebody else, you do not know that these percentages are the proper percentages?

A. I don't of my own knowledge, I didn't make them.

Q. That is you didn't make the percentages?

A. Yes sir I made the percentages, but I mean the division of earnings.

Q. Do you know what the total earnings for Michigan on 370 any of these branches is?

A. No sir, I presume they are correct, but so far as the average percentage is concerned it would not make any difference how you divided it up, you get the total of the company's earnings in Michigan and the total tax and we get the average rate.

Q. How do you get your total for Michigan of earnings?

A. Well, I get that from the auditor's office.

Q. You don't know anything about it?

A. I don't.

Q. So you don't know whether this computation is the correct computation?

A. I do not. I can say this much, that these figures are made by the auditor's office without regard to tax matters, it is among the records of the office of earnings and they are not gotten up for tax purposes.

Q. But they are gotten up for the purpose of making a report to the State of Michigan?

A. I suppose so. Not only that but the company naturally want a correct account of its earnings in all the States.

Q. Are those the figures appearing in the official reports to the State of Michigan?

A. I haven't compared them myself.

Q. Don't they report the same figures to the Michigan officers that they have on their books?

A. Well, as I understand that we were expected to get the earn-

ings up to a certain date in April but permission was given to give the earnings up to the 30th of June; now, they would naturally vary somewhat of course for the year ending the 30th of June and those earnings for the calendar year up to the 31st of December.

371 Q. Those earnings are taken for a different period?

A. They are taken for the calendar year which is also the company's fiscal year.

Q. Taking the business for two years that will show, the average ought to be the same as given in the reports made to the public officials and on your books there?

A. In the long run it would be the same of course.

Q. Well, is it the same?

A. Well, I presume it would be; there certainly would be a difference for the year beginning and ending the 30th of June as compared with the calendar year.

Q. Now can you tell me who makes the division of these earnings?

A. Well, there is the auditor of passenger receipts and the auditor of freight receipts they are two different departments, they are portions of the auditor's department; I pay no attention to those matters?

Q. Who is the auditor of freight receipts?

A. Mr. Tully.

Q. Of where?

A. Cleveland.

Q. And who is the auditor of passenger receipts?

A. Mr. F. A. Wyman.

Q. They would know the full circumstances in regard to the division of those earnings?

A. I should say so.

Q. Do you know whether they are directed by any official to make the division in any particular way?

A. I don't know.

Q. What books would those appear from?

A. I don't know anything about it.

Q. You have some judgment on the question?

372 Mr. ANGELL: I object to that question.

A. I haven't any any way.

Q. You don't know anything about it?

A. I don't.

Redirect examination by Mr. ANGELL:

Q. You get the figures of the gross earnings from the auditor's department?

A. Yes sir.

Q. And you get your figures of the taxes assessed from the State board?

A. Yes sir.

Q. And you make the computation yourself?

A. Of the percentages, yes sir.

Q. Which you have testified to?

A. Yes sir.

Mr. ANGELL: That is all.

Mr. WYKES: That is all.

Mr. BLAIR: I move that the testimony of the last witness be stricken from the record as not based upon any foundation of fact so far as his computation is concerned.

373 F. O. GULLIFER being recalled as a witness on behalf of the complainant testified as follows:

Direct examination by Mr. ANGELL:

Q. Now, between the 12th and the 16th of January last do you know whether the State board of tax assessors sent out any notices to the Lake Shore Company or to any of its subordinate companies as to this proposed increase in the assessment as originally made?

A. I don't recollect whether they did or not; I can't tell.

Q. You cannot tell at the present time?

A. No sir.

Cross-examination by Mr. WYKES:

Q. Now do you know the date on which the Lake Shore representatives appeared before the board?

A. I could not tell here.

Q. If it was the 12th of January the board continued in session for a number of days after that, didn't it?

A. Well, I think the board was in session until the 15th.

Q. The board was in session to and including the 15th.

A. I think it was.

Q. And during that time the representatives of the different roads appeared before it?

A. Yes sir.

Q. And they were holding hearings during this time?

A. I think they were.

Q. Now, do you know when the increase in the Lake Shore assessment occurred?

A. No sir.

374 Redirect examination by Mr. ANGELL:

Q. You know it occurred before the roll was finally made up?

A. I think there is no doubt about that.

It is agreed between counsel that the bill of complaint of the Lake Shore and Michigan Southern Railway Company may be considered amended by inserting at the end of paragraph 13 instead of the figures which there appear the figures of the percentages testified by the witness Jaeger.

J. N. O'BOYLE recalled as a witness on behalf of the complainants testified as follows:

The WITNESS: I wish to correct my testimony as to the lines in Michigan, the so-called proprietary lines; there are three of those that are leased lines in which the Lake Shore does not own a majority of stock, namely, the Fort Wayne & Jackson, the Detroit, Hillsdale and Southwestern, and the Kalamazoo, Allegan & Grand Rapids.

Cross-examination by Mr. WYKES:

Q. There is an agreement with each of these roads whether they are proprietary or leased roads?

A. Yes sir.

375 ARTHUR E. DELF being called as a witness on behalf of the complainants and being first duly sworn by the examiner to tell the truth, the whole truth and nothing but the truth testified as follows:

Direct examination by Mr. ANGELL:

Q. Where do you reside?

A. Marquette, Michigan.

Q. And what is your business?

A. Auditor of the Duluth, South Shore and Atlantic road.

Q. And how long have you held that office?

A. Since 1894.

Q. Were you at Lansing during the month of January 1903?

A. I was.

Q. Were you there more than once that month?

A. I think not.

Q. What day if you recollect were you there?

A. I was there the 6th and 7th.

Q. For what purpose were you there?

A. Well! I was there with Mr. Eldridge our general counsel to meet the State board of assessors with a view of getting the assessment of the roads represented by us reduced.

Q. You mean January 1903 of course?

A. Yes sir.

Q. You and Mr. Eldridge appeared before the board to make a showing for what purpose?

A. To obtain a reduction in the assessment of the Duluth, South Shore and Atlantic railway.

Q. At that time had an approximate value, or a tentative value been placed by the board on the property of your road?

A. There had.

Q. What was that value as you recollect it?

376 A. \$11,250,000.00.

Q. During the interview you had with the members of the

board what if anything was said by them as to a purpose to increase that figure to a larger figure?

Mr. WYKES: I object to that; it is shown by the records of the hearing.

A. There was nothing said.

Q. In fact the valuation was increased at a later date?

A. Yes sir.

Q. When did you first learn that a larger valuation, to-wit the one finally fixed, had been placed upon your property—upon your road's property?

A. I think it was about January 21st or 22d. 1903.

Q. Do you recall from what source you received that information?

A. From the daily papers.

Q. Between the date you were there on the 6th and 7th of January and the 16th of January state whether your road received any notice from the board of State assessors of any intention on its part to increase the valuation or gave notice to appear and show cause why such increase should not be made?

Mr. WYKES: We object to this; no knowledge on the part of the witness to make this statement is shown.

A. It didn't.

Q. Who has charge of the tax matters for your road?

A. I have.

Q. You yourself have?

A. Yes sir.

Q. As regards the assessment that was made, the reports, notices etc. during January of this year and the months immediately  
377 prior you represented your road and had charge immediately of all such matters?

A. Yes sir.

Q. Such notices as were received prior to the 6th and 7th of January reached you, did they?

A. They did.

Q. And it is in the light of those facts that you made the statement in response to my question a moment ago?

A. Yes sir.

Q. Did you as a matter of fact in any way whatever know until you saw it in the newspapers that the board proposed to increase or had increased your assessment?

A. No sir.

Q. Is there anything else in that connection which you desire to state as to which I have not interrogated you, if so state it?

A. I know of nothing.

Q. I call your attention to an allegation contained in the bill filed by the Sault St. Marie Bridge Company against Perry F. Powers as to the ownership by the complainant in that case of engines and

rolling stock. What is the fact as to whether the Sault St. Marie Bridge Company owns any engines or cars of any kind?

A. It does not.

Q. What is the fact as to whether it operates any cars over the bridge which it owns?

A. It does not.

Mr. WYKES: We object to all this line of testimony as immaterial.

Q. How are the cars and engines operated over the bridge of the Sault St. Marie Bridge Company?

A. They are operated jointly by the three companies using the bridge, the Canadian Pacific, the Minneapolis, St. Paul and Sault St. Marie and the Duluth, South Shore and Atlantic.

Q. What sort of a company is this complainant, a rail road company or what?

A. It is a bridge company owning an international bridge  
378 between Canada and the United States.

Q. At or near Sault St. Marie?

A. Yes sir.

Cross-examination by Mr. WYKES:

Q. You were before the State board on the 6th and 7th of January 1903?

A. It was one of those days; we were there both days, I have forgotten which day we appeared before the board.

Q. Did you appear after that?

A. No sir.

Q. But under the law the board continues in session up to the 15th?

A. I believe so.

Q. And continues during that time to revise assessments? That is true, isn't it?

A. As I understand it, yes sir.

Q. Now you have said that you received notices generally. Would it be possible for your company to receive a notice that their taxes were increased, or would it have been possible between the 6th and the 15th of January without your having known anything about it until after the 16th?

A. A notice might have been addressed to some other official and received by him but it would have been turned over to me.

Q. It would have been possible for that to have occurred?

A. It would.

Q. Now as to the Sault St. Marie Bridge Company; what law is this company organized under?

A. I think the State of New Jersey.

Q. It is organized as a rail road corporation under the rail road laws of the State of Michigan, isn't it?



379 A. I am not sure about it, I really don't know.

Q. Now how long is it that you have been connected with the tax department of this road?

A. I have always compiled the figures in the books since 1894.

Q. Have you had anything to do with the tax department of the Sault St. Marie Bridge Company?

A. No sir.

Q. Do you know anything about where and how they pay their taxes?

A. No sir.

Q. Don't you know it to be a fact that they pay their taxes in the State of Michigan under the rail road law? Isn't that a fact?

A. I believe it is but I am not very certain.

Q. And isn't it a fact that they have done that for ten years past?

A. Well, my only knowledge upon that point is from the commissioner's reports.

Q. Now this bridge was build under an agreement between the Canadian Pacific, the Duluth, South Shore and Atlantic and the Soo line, wasn't it?

A. Yes sir.

Q. And it was built for the purpose of their carrying on their rail road business between Canada and the United States?

A. It was built in connection with and between the two roads.

Q. And the business passing over the bridge is rail road business, isn't it?

A. It is.

Q. Do you know the nature of the arrangement under which the bridge was originally constructed?

A. I don't recall the nature of the original arrangement; I know the present arrangement of operation.

380 Q. Give us the details of the present arrangement?

(By Mr. ANGELL:)

Q. Is that arrangement in writing?

A. I think it is.

Mr. ANGELL: I object to the question as not the best evidence.

Mr. WYKES: We will give you notice to produce that writing so that we can put it in evidence.

By Mr. WYKES, resuming:

Q. Who has it in possession at this time?

A. I have a copy; I think I have one of the original copies.

Q. Have you one with you?

A. No sir, it is at Marquette.

Q. Then the Sault St. Marie Bridge Company is made up on these rail road corporations, is it not?

A. They own the stock of the association.

Q. They own the entire stock?

A. Yes sir.

Q. And its entire business is in carrying on the rail road business of those corporations?

A. Yes sir.

Q. And the Sault St. Marie Bridge Company was organized under the general rail road law of the State of Michigan for the purpose of building a bridge for the sole purpose of carrying on the rail road business of these rail road companies?

A. I can not say as to that.

Q. It is organized—we will leave out the fact that it is organized under the general rail road law—it is organized by these Michigan rail road companies for the purpose of carrying on their rail road business?

A. For the purpose of making connection with the Canadian Pacific.

Q. It is an incident of the rail road business?

A. Yes sir.

381 Q. Now, has the corporation which built the bridge any other purpose for existence than simply its connection with these rail road companies?

A. I think not.

Q. Now, isn't it a fact that the rental is a nominal sum simply for the purpose of dividing the cost of maintaining the bridge among these companies?

Mr. ANGELL: I don't see how this is relevant so that I will save the point that it is immaterial and irrelevant.

A. The three companies contribute to the fund for the payment of interest, taxes and sinking fund and to pay off the bonds.

Q. The rest of the proceeds of the road goes into the business of the rail road companies—it goes into their gross earnings?

A. It is deducted from the cost of operating.

Q. Then it is true that these roads simply pay a nominal sum for the business they do over the bridge?

A. Well, the amount of taxes, interest on the bonds and sinking fund.

Q. Simply what is necessary to keep the bridge in existence?

A. Yes sir.

Q. Do you know whether this bridge company makes reports to the commissioner of rail roads of the State of Michigan?

A. Only through seeing it printed in the report.

Q. You have seen it in the reports?

A. Yes sir.

Q. Then you do know from that that they do make reports?

A. Yes sir.

Q. I hand you the printed report of the commissioner of rail roads for the year 1901 and call your attention to the table found on pages 216 and 217 which is a table indicating the taxes paid by the sev-

382      eral rail road companies organized under the general law from the year 1894 to 1900 inclusive and I ask you to tell me if the Sault St. Marie Bridge Company does not appear in that table?

A. It does.

Mr. ANGELL: I object to that as immaterial.

Q. I ask you further, doesn't it appear in each of those columns that they paid taxes during the several years from 1894 to 1900 inclusive?

Mr. ANGELL: I make the same objection.

A. It does.

Q. I ask you to read the amounts and state the year in each instance?

A. In the year 1894 \$667.32.

In the year 1895 \$674.19.

In the year 1896 \$710.68.

In the year 1897 \$821.37.

In the year 1898 \$911.50.

In the year 1899 \$909.68.

In the year 1900 \$990.78.

Mr. ANGELL: I make the same objection as before.

Q. I give you the same report of the commissioner of rail roads for 1901 and ask you if it contains the report of the Sault St. Marie Bridge Company for the year 1900?

(Counsel presents book to witness.)

A. It does.

Q. Will you tell me as indicated by that report when the road was organized, that is when the bridge company was organized under the general rail road law?

A. It was chartered March 16th, 1887.

Q. When was the bridge company actually formed?

A. That I don't recollect.

383      Q. Do you know when the bridge was built?

A. No I don't; somewhere about that date though.

Q. Your line extends through the State of Michigan from what point on the east?

A. Sault St. Marie.

Q. And to what point on the west?

A. West Superior Wisconsin.

Q. You run sleeping cars of your own, do you?

A. We do.

Q. How many have you?

A. Five.

Q. Those are the only sleeping cars that run over your line?

A. There is one sleeper running now from Detroit through to

Sault St. Marie in connection with the Michigan Central that is a Pullman sleeper.

Q. These are the only sleepers owned by yourself or any other company other than the Pullman Company?

A. No sir. The Chicago, Milwaukee and St. Paul runs a sleeper up into the copper country, up into Calumet.

Q. Over your line?

A. Yes sir. I should say to Houghton instead of to Calumet.

Q. That makes six sleeping cars that are owned by the rail road companies to operate over your line?

A. Well it makes more sleeping cars than that; they are run on one train each way every day; there are more sleepers in the service than six.

Q. Do you mean you own more than five?

A. We only own five sleepers.

Q. How many do you say the Minneapolis road runs over your line?

A. None.

Q. What was the road?

A. The Chicago, Milwaukee and St. Paul.

384 Q. How many do you say they run over your line?

A. One in each direction each day to Houghton from Champion to Houghton and return.

Q. There are seven sleepers that run over your line?

A. Yes sir. There might be more than that in the service.

Q. I mean outside of the Pullman sleepers?

A. I could not enumerate the sleepers, they might change off every day for all I know.

Q. There are only seven engaged in running over your line—I don't mean to identify the particular sleeper?

A. Yes sir. There is one runs on the Chicago and Northwestern train up into the copper country that would make eight, that is a Pullman sleeper.

Q. What is the value of your sleeping cars, the five that belong to your company?

Mr. ANGELL: I object to that as irrelevant.

A. I think they cost about \$75,000.00.

Q. For the five?

A. Yes sir.

Q. Do you know anything about the value of the sleepers belonging to the other rail road companies?

A. I do not.

Q. Are the sleepers that are owned and operated by your company operated entirely within the State of Michigan?

A. No sir, they run through to Duluth.

Q. Do they cross the Sault St. Marie river on the east?

A. No sir they do not.

Q. About what proportion of their time are they in Michigan.

Mr. ANGELL: I object to that as immaterial.

385 A. About seventy five per cent. That is the running time.  
Q. Where are they when they are not running?

A. They lay off at Duluth all day; one is there all day and another at the Soo all day.

Q. Do you mean to say there are four in Duluth all day and one at the Soo?

A. No sir, they run around to various places and it is pretty hard to locate them.

Q. You said they kept them at Duluth during the day?

A. One—there are two in at Duluth all day and one at Calumet and one at Sault St. Marie and perhaps two, I could not just distribute them.

Q. The sleepers owned by other rail road companies, for instance those run by the Chicago, Milwaukee and St. Paul, what proportion of their time are they in the State?

A. I could not tell you that because they are in the State a part of the time while they are on the Chicago Milwaukee & St. Paul road before they reach our line.

Q. Can you approximate it for me?

A. I can give the time when they leave Chicago and the time when they reach Calumet and the time they leave Calumet and when they reach Chicago again.

Q. Just do that please?

A. It is a matter of mileage computation probably. The Chicago Milwaukee and St. Paul sleeper leaves Chicago at 10.40 at night and reaches Houghton about 11.30 in the morning; it leaves Houghton about four o'clock in the afternoon and reaches Chicago about 7.30 the next morning.

Q. Now the sleepers which your company operates are operated incidentally to your rail road business?

A. Yes sir.

Q. You are not engaged in the sleeping car business generally?

A. Not other than that.

386 Q. As an incident to your railroad business merely?

A. Yes sir.

Q. When were these sleepers acquired?

A. We commenced running them in June 1902.

Q. In June 1902?

A. Yes sir.

Q. Then you bought them since 1900 some time?

A. Yes sir.

Q. Can you give the precise date?

A. When we purchased them?

Q. Yes sir.

A. No sir, I cannot; we received them just shortly before we commenced running them; we commenced running them as soon as we received them.

Q. You received them just shortly before you commenced running them in June 1902?

A. Yes sir.

Q. Now the Canadian Pacific Railway Company, does it run any sleepers of its own in the Upper peninsula?

A. Not over our line.

Q. In the Upper peninsula over any other lines?

A. I believe they run some sleepers over the Soo line.

Q. Do you know how many?

A. I do not.

Q. Could you tell by a reference to the time table of the Canadian Pacific road?

A. No sir, I could not.

Q. Does it indicate the sleepers?

(Counsel hands railway folder to witness.)

A. It would not indicate the ownership of the sleepers; the Soo system runs its sleepers in the same train.

Q. What do you mean by its sleepers—the Pullman sleepers?

A. No sir, the Soo line, they own their own sleepers also.

Q. Do you mean to say that neither of these roads operate any Pullman sleepers?

387 A. No sir, none of them.

Q. You can give from a reference to the time table the sleepers belonging to both of those companies?

A. No I don't believe the time tables will indicate it.

Q. Do you know what sleepers are operated by the Canadian Pacific in the Southern peninsula over the Wabash?

A. No sir.

Q. You don't know that they operate any?

A. No sir.

Q. The sleepers operated by the St. Paul road in Michigan not belonging to the Pullman Company are limited to two?

A. Are you speaking of the South Shore line now?

Q. I am speaking of the entire business in the State of Michigan?

A. I don't know of any sleepers they operate other than on our own line; I have no knowledge what sleepers they operate other than on the South Shore line.

Q. What is the ordinary cost of a sleeper?

Mr. ANGELL: I object to it as irrelevant.

A. I can only speak from those I have already told you about; our sleepers cost us in the neighborhood of fifteen thousand dollars each.

Q. You operate fully as good a sleeper as the other railroad companies that own their own?

A. I presume so.

Q. And they cost in the neighborhood of fifteen thousand dollars apiece?

A. Yes sir.

Q. Have you acquired any other equipment in the passenger department since 1900?

Mr. ANGELL: I object to that as irrelevant.

A. Yes sir some passenger coaches and some combination baggage and smoking cars.

388 Q. How many of the passenger coaches have you acquired?

Mr. ANGELL: The same objection.

A. Four.

Q. When did you get them?

A. In 1902, I don't remember just the exact date.

Q. Some time before the middle of the year?

A. Yes, sir.

Q. And about what are those worth?

A. Well, I think they cost us between six and seven thousand dollars each.

Q. And you say you acquired how many?

A. Four.

Q. And the combination baggage and passenger cars, how many of those did you acquire?

A. I think there were two of those.

Q. What were those worth?

A. Between five thousand and fifty-five hundred dollars.

Q. Now your locomotives: Have you acquired any new locomotives?

A. No, sir.

Q. Have you added to the equipment in your freight department?

A. No, sir.

Q. Nothing whatever?

A. No, sir.

Q. Have you built any new track since 1900?

Mr. ANGELL: I make the same objection to this, that it is improper cross examination.

A. Very little. Just incident to the sidings that we have built, no new main line.

Q. And you have put in sidings?

A. Yes, sir.

Q. And you have straightened some track?

A. I don't recall that we have straightened any track.

389 Q. Have you double tracked any?

A. No, sir.

Q. Where have you put in your new sidings?

A. I cannot recount them; we have put in sidings at one place and taken them out at another. I think our line as a whole has been reduced rather than increased, the mileage has been reduced rather than increased.



Q. Have you built any new bridges during the course of the year?

A. No, sir.

Q. Any new culverts?

A. Not that I recall.

Q. Have you replaced any old bridges?

A. Mr. ANGELL: I desire to put in an objection to any of this class of testimony in relation to the alterations in the status of the property of this road as immaterial, irrelevant and improper cross examination in the Federal court.

Q. Have you replaced any old bridges?

A. Since what date?

Q. Since October 1900.

A. I think perhaps we have rebuilt some bridges.

Q. Where?

A. I don't know that we have entirely reconstructed them.

Q. Where?

A. That I couldn't say.

Q. The rebuilding added to the value of your railroad?

A. Well, it renewed the bridges.

Q. Do you know what the cost of that was?

A. It is not very extensive, perhaps six or seven thousand dollars.

Q. Now in the auditing department you know the cost of these things and you know what is done in this way of improvement.

Are there any other improvements in your road which have added to its value since October 1900?

A. Not to any great extent that I can recall.

Q. Are there any—you say not to any great extent—what changes have you made since 1900?

A. Well we might have built some bridges instead of replacing them.

Q. Where was that?

A. Well, at various points. The bridges go by numbers.

Q. Isn't there one of those where you had to move a number of hundred millions of cubic feet of earth to fill it?

A. No, sir, I think not.

Q. A number of hundred thousand, I will say, that cost a great deal of money.

A. I can give you the particulars of those from my records at home; I cannot from memory.

Q. Where was it they made this large fill?

A. I don't know what fill you refer to.

Q. Well, any large fill that they have made.

Q. We haven't made any very large fills at all.

Q. Any that you have made, just state them?

A. There is one bridge that was filled at Anna river, or one trestle rather.

Q. How much earth was moved there?

A. I can't tell, you.

Q. What was the cost of it?

A. That I could not tell you.

Q. That is indicated by your books?

A. It is.

Q. You could furnish a statement of that from your books?

A. I can give you a statement of that, yes, sir.

391 Q. And will you furnish it?

A. I will. You want the statement of the bridges that have been filled?

Q. And the bridges that have been built and the betterments of the road.

Mr. BUTTERFIELD: I object to that. I will state to the witness that I do not think he is under any obligation to furnish any such statement unless he wishes to do so, and I object to the statement being furnished as immaterial and irrelevant to the issue.

Q. You are familiar with time tables generally?

A. Somewhat.

Q. Here is a time table of the Canadian Pacific railroad, and I ask you what is stated by that table on the page shown you, give us a statement of what it is.

Mr. BUTTERFIELD: That is objected to as immaterial.

A. It is a statement of the running time of trains between Halifax and other points on the east end and Minneapolis on the west end.

Q. In which direction?

A. Both directions, east and west.

Q. Will you give me the year of that time table, the date of it?

A. October 11, 1903.

Q. Now notice the foot note at the bottom of the page. Does not that indicate the sleepers run over the lines indicated there.

A. It doesn't indicate what sleepers; it indicates that there are sleepers.

Q. Will you give the numbers indicated by that, the number of sleepers which run through Michigan over these lines?

392 Mr. BUTTERFIELD: I object to it as irrelevant, immaterial and incompetent.

A. I couldn't do it; it doesn't indicate it.

Q. Read the note please?

A. No. 1, Pacific express leaving Montreal daily, has colonists' and first class coaches and sleeping car to Vancouver; sleeping car from Toronto and Winnipeg via North Bay and from St. Paul to Seattle via Soo Pacific route. Tourists' cars for Vancouver leave Boston Wednesday, Montreal Thursday, Toronto Tuesday and Saturday,

Winnipeg Thursday and Saturday and Monday, and daily from St. Paul and Seattle via Moose Jaw.

Another note: No. 7, St. Paul express, leaving Montreal daily, has sleeping car from Boston with solid train from Montreal to St. Paul and Minneapolis via Soo line, connects at Sault Ste. Marie with express for Duluth, sleeping car with buffet dining car serving breakfast daily from Sault Ste. Marie to Duluth. Buffet car Boston to Montreal; dining car from Matewa to Minneapolis and St. Paul.

Q. Now let me ask you if there are trains indicated there that do not run through the State of Michigan.

A. Yes, sir.

Q. State the numbers?

A. Train No. 1.

Q. What is the route of that please?

A. From Montreal to Vancouver via Sudberry and the Canadian Pacific railway running north of Lake Superior; that is entirely through Canadian territory.

Q. Are there any others?

A. Train No. 79 running from Prescott to Pembroke. There is only one train running through the State of Michigan.

393 Q. Each way?

A. Each way.

Q. That is the only train indicated there as carrying sleepers?

A. Well, No. 1 and 7 are both indicated as carrying sleepers.

Q. Those are the only two that run through the State of Michigan.

A. No, sir. No. 1 does not run through the State of Michigan. No. 7 west bound and No. 8 east bound are the only two that run through the State of Michigan.

Q. No. 7 is the only one that carries sleepers?

A. 7 and 8.

Q. Read the note as to 7 and 8.

A. I have already read No. 7; I will read No. 8. No. 8, solid train from Minneapolis and St. Paul to Montreal with sleeping car to Boston. Sleeping car with buffet dining car serving breakfast daily from Duluth to Sault Ste. Marie, there connecting with express from St. Paul for Montreal. Dining car from St. Paul and Minneapolis to Matewa, buffet car Montreal to Boston. Passengers arriving at Montreal Sunday a. m. take 7:45 p. m. train for Boston.

Q. Now what is the running time through the State of Michigan as indicated by that time table?

A. Do you want it in both directions?

Q. In either direction.

Mr. ANGELL: I object to that as irrelevant and as no evidence of the fact.

Q. You know what time is taken to run through the State of Michigan over the Soo line?

A. I cannot tell; there is nothing to indicate it here.

Q. You can approximate it?

394 A. Well, perhaps I can from another part of the card. I know very little of the running of the Soo line; I have never been over it in the day time and I can't tell you.

Q. It would not take over six hours, would it, to go through the State of Michigan on the Soo line.

A. I think it would.

Q. It would not take to exceed eight on the outside.

A. I don't know.

Q. Now the parlor cars that you operate are Pullman cars, are they not?

A. No, sir.

Q. What are they then?

A. We do not operate any parlor cars.

Redirect examination by Mr. ANGELL:

Q. Have you put out of use the old chair cars which you used to own and operate?

A. No, sir.

Q. Are they still used?

A. They are still used; the only ones we have.

Q. How many of those are there?

A. Three.

Q. But you don't run any Pullman through cars over your system at all.

A. We do not.

Q. How is it about dining cars? Do you operate your own

A. Yes, sir.

Q. So far as you know the Pullmans which are run in the Upper peninsula are those which you have told us about, one running each way by the Michigan Central connection to the Soo and such as run over the Chicago & Northwestern.

A. That is all that operate over the Duluth South Shore & Atlantic road.

395 Q. So far as you know are there any others operated in the Upper peninsula except on those roads.

A. No, sir.

Q. The only sleepers you are acquainted with are the sleepers owned by the railroad companies.

A. Yes, sir.

Q. Have you any knowledge of your own whether these statements that you have been reading from on that yellow time card are correct?

A. I have not.

Q. You know nothing about it.

A. I know nothing about it.

Q. You were asked whether it was possible that a notice from the State board of assessors could have reached your road and not reached your hands. Do you recall that question?

A. I do.

Q. Let me ask you whether at any time when you did learn of the increase in the assessment any such notice ever reached you from any department of the road?

A. It did not.

Recross-examination by Mr. WYKES:

Q. Now the chair cars that you speak of, they are merely your regular passenger cars.

A. I didn't speak of any chair cars.

Q. Mr. Angell asked you that question. You haven't any chair cars, do you say?

A. We have none that I would designate as chair cars.

Q. What are the three cars.

A. We have three cars that are made up of old coaches and have a central portion for a dining car, serving meals, and the rear portion has eight seats in I think for passengers, and the forward portion for smoking.

Q. You make an extra charge for riding in those cars?

A. Yes, sir; we make an extra charge, and we call them observation cars.

Q. You say they are made up of old coaches. What are they worth?

Mr. ANGELL: I object to that as immaterial.

A. I could not say what they are worth.

Q. Weren't they put in their present condition since 1900?

A. No, sir; they were running prior to that.

Q. When you speak of your chair cars, all these cars are the dining cars you operate?

A. Three of them. We have one dining car entirely, it has no seats in it, no observation seats.

Q. How long have you owned that car?

A. That is one of our old coaches that we have rebuilt.

Q. These coaches are not worth very much in fact.

A. No, sir; they are not.

Q. They are not worth as much as one of your sleepers?

A. No, sir.

Q. Nor as much as one of your ordinary passenger cars.

A. No, sir.

Q. Now you say you have some Pullman cars operating over your line. Do you know what the nature of the arrangement of your company is with the Pullman Company.

A. We have none.

Mr. ANGELL: I object to it as irrelevant.

397 Q. You have no arrangement?

A. No, sir.

Q. There must be an arrangement of some character through which they run the car, isn't there?

A. Well, the roads that operate those sleepers, in one case the Chicago & Northwestern, has an arrangement with the Pullman Company, whatever it may be.

Q. And you have an arrangement with the other company.

A. We haul their car over our road.

Q. What are the terms or what is the understanding between your company and the Michigan Central for their car that you haul—

Mr. ANGELL: I object to it as irrelevant.

Q. (Continuing :) —for the Pullman car you haul for them.

A. As I recollect it we pay for a portion of the supplies furnished the car, and that is all.

Q. That is in the nature of a rental.

A. No, sir, it is not in the nature of a rental. The Michigan Central Company I believe pays the entire rental to the Pullman Company, and we bear no portion of it.

Q. Do you pay on a track mileage basis?

A. Do you mean the expense?

Q. Yes, sir.

A. Yes, sir, the expenses are borne on a track mileage basis.

Q. With the Chicago, Milwaukee & St. Paul, what is the nature of the arrangement you have there?

Mr. ANGELL: We make the same objection to that.

A. We haul a solid Chicago, Milwaukee & St. Paul train consisting of day coaches and a sleeper from Champion to Houghton  
398 and return each day.

Mr. ANGELL: I desire to add to my objection as immaterial that this is improper cross examination.

Q. How do you divide the profits upon that haul as between your company and the Chicago Milwaukee & St. Paul?

Mr. ANGELL: The same objection as before.

A. We get nothing from the sleepers. The Chicago, Milwaukee & St. Paul gets all the revenue.

Q. You get nothing but the transportation fare out of the haul?

A. That is all.

Q. And the arrangement generally of the railroad companies with the Pullman Company is that the cars are run over the railroad companies' tracks under some sort of an agreement by which the railroad company either pays a track mileage, or the Pullman Company makes a payment; isn't that so?

A. That is usually the case.

Mr. ANGELL: I object to that.

Q. The Pullman Company doesn't own any roadbed in this State?

A. I don't know of any.

Q. Or any right of way?

A. Not that I know of.

Q. Or any stations?

A. No, sir.

Q. It doesn't furnish any motive power?

A. Not that I know of.

Q. And its business is limited to furnishing these cars?

A. I believe so.

Q. That are hauled by another company?

A. Yes, sir.

Q. It doesn't collect any transportation fares?

A. Not that I am aware of.

399 Q. It doesn't own any real estate that is used in carrying on its business.

A. I know nothing about it.

Q. The property used in carrying on this business, so far as you know, is personal property, isn't it?

A. So far as I know, yes, sir.

Q. Wouldn't you know if they had real estate that was used in carrying on their business?

A. No, sir.

Q. In this State?

A. No, sir, I wouldn't. The Pullman Company do you mean?

Q. Yes, sir?

A. No, sir, I would not.

Q. They don't own any of the right of way you have said that they run over?

A. I have not said that.

Q. What connection would they have with any other real estate?

Mr. ANGELL: I object to the question as argumentative and improper cross examination.

A. They might own real estate and I wouldn't be aware of it.

Q. Now the Pullman Company depends upon the railroad companies for its existence, doesn't it?

Mr. ANGELL: I object to the question as calling for a conclusion of fact.

A. I don't know anything about the Pullman Company's affairs.

Q. Suppose the railroad companies were out of business today, what would become of the Pullman Company? Would they haul any cars tomorrow?

A. I don't know; I don't know what arrangement they might make.

400 Q. Doesn't the continuance of the business of the Pullman Company depend upon the continuance of the business of the railroad companies?



A. Well, I have very little knowledge of the Pullmans Company's affairs except as they have been connected with our line.

Q. Does the continuance of the business of the railroad company depend on the continuance of the business of the Pullman Company?

A. Speaking for the Duluth, South Shore & Atlantic it does not.

Q. Doesn't the same condition exist in regard to the other railroads?

A. That would be my opinion.

Redirect examination by Mr. ANGELL:

Q. You are familiar are you not with the ordinary café parlor cars run on the various lines in this country.

A. Some.

Q. With a cooking pen in one end and a place to eat and most of the car taken up with swinging stuffed seats?

A. Yes, sir.

Q. Now what you call an observation car on your road is of the same general type as the ordinary café parlor car except that the place where the people sit takes up a less proportion of the total car than is usual?

A. Yes, sir.

Q. And you have at one end a separate and rather large compartment for smokers?

A. Yes, sir.

401 Q. The café and dining tables are in the center of the car instead of at one end.

A. Yes, sir.

Q. And the seats where people sit are revolving arm chairs?

A. There are six revolving chairs and a sofa in each car.

Q. The general type of the car then is exactly like what we speak of as a chair car, isn't it, only not quite so elegant as some.

A. I should designate chair cars such as are entirely of chairs.

Q. We will say the café parlor car, it is the same type?

A. Yes, sir.

Recross-examination by Mr. WYKES:

Q. You operate these diners as incidental to your business?

A. Yes, sir.

Q. You are not in the dining car business?

A. We are not; we don't make a business of it.

Q. Except as incidental to the railroad business?

A. Yes, sir.

Redirect examination by Mr. ANGELL:

Q. Your dining car business is not any different than the dining car business of any railroad?

A. Not at all. It is to furnish meals to the general public.

Q. You do not keep a hotel, but you furnish meals to passengers  
A. To passengers, yes, sir.

(Hearing here adjourned until 2 o'clock.)

402

Afternoon's Proceedings.

F. O. WALDO, being called as a witness on behalf of the complainants, and being first duly sworn by the examiner to tell the truth, the whole truth and nothing but the truth, testified as follows :

Direct examination by Mr. BUTTERFIELD :

Q. You reside in the city of Detroit ?

A. I do.

Q. And what position do you hold in the Michigan Central Railroad Company ?

A. Assistant auditor.

Q. As assistant auditor do you have knowledge of the relations between the Michigan Central Railroad Company and certain subsidiary companies mentioned in the bill of complaint in this case ?

A. I do.

Q. I will ask you to state whether or not the Michigan Central has contract relations with the following roads, as I shall name them, under which contracts the Michigan Central Company is obligated to pay the taxes of those respective companies as follows :

The Battle Creek & Sturgis Railroad Co.,

The Bay City & Battle Creek Railroad Company,

The Canadian Southern Bridge Company,

The Detroit & Bay City Railroad Company,

The Grand River Valley Railroad Company,

The Jackson, Lansing & Saginaw Railroad Company,

The Kalamazoo & South Haven Railroad Company,

The Michigan Air Line Railroad Company,

403 The Michigan, Midland & Canada Railroad Company.

The Toledo, Canada Southern & Detroit Railroad Company.

A. They have with those you have named.

Q. What are the relations between the Michigan Central and the Buchanan & St. Joseph River Railroad Company, and the Detroit, Delray & Dearborn Railroad Company, respectively ?

A. The Michigan Central is the owner of the entire stock of those companies. We have no separate agreement.

Q. As the owner of the entire capital stock does the Michigan Central operate the railroads of those two companies.

A. It does.

Q. Does it pay the expense of operation ?

A. Yes, sir.

Q. Including taxes ?

A. Including taxes.

Q. How long has that continued?

A. I don't remember the date.

Q. Has it continued for ten years or so?

A. Yes, sir.

Q. Have you the contracts I have referred to here in the court room?

A. I have.

It is stipulated and agreed that the attorney general will be furnished copies of all these contracts, and that he may make such use of them as he sees fit as a part of the cross examination of Mr. Waldo; and that as to the Detroit, Delray & Dearborn and the Buchanan & St. Joseph River Companies, it is stipulated that they may be treated as included in the bill of complaint of the Michigan Central road.

404 Mr. BLAIR: Yes, sir; the same as in the case of the Lake Shore.

Battle Creek & Sturgis contract referred to marked Exhibit A2.

Bay City & Battle Creek contract marked Exhibit B 2.

The Canada Southern Railroad Company, which includes the Canada Southern Bridge Co., the Toledo, Canada Southern & Detroit, and the Michigan, Midland & Canada, marked Exhibit C 2.

The Detroit & Bay City contract marked Exhibit D 2.

The Grand River Valley contract marked Exhibit E 2.

The Jackson, Lansing & Saginaw contract marked Exhibit F 2.

The Kalamazoo & South Haven contract marked Exhibit G 2.

The Michigan Air Line marked Exhibit H 2.

Mr. BUTTERFIELD: That is all of this witness.

Mr. WYKES: That is all; we have no cross examination.

405 Mr. BUTTERFIELD: In the case of the Detroit & Mackinaw Railroad Company I desire to offer in evidence the table appearing on page 31 of the report of that company to the State board of assessors for the year 1902, as follows:

Cash and current assets available for payment of current liabilities:

Cash .....	38,942.22
Bills receivable.....	
Due from agents.....	14,003.57
Due from solvent companies and individuals.....	18,281.64
Net traffic balance due from other companies.....	
Other cash assets.....	
Insurance paid in advance.....	567.93
Total cash and current assets.....	71,795.38
Balance current liabilities.....	110,948.89
Total .....	182,744.27

## Current liabilities accrued to and including April 14, 1902:

Receiver's certificates.....	
Loans and bills payable.....	110,000.00
Audited vouchers and accounts.....	
Wages and salaries.....	69,629.63
Net traffic balance due to other companies.....	3,114.64
Dividends not called for.....	
Matured interest coupons unpaid.....	
Rents due April 14th.....	
Miscellaneous .....	

---

Total current liabilities..... 182,744.27

406 On behalf of the Chicago & Northwestern Railway Company I desire to offer the same appearing on page 31 of the report filed with the State board of assessors for the year 1902.

## Total cash current assets available for payment of current liabilities:

Cash.....	6,531,242.64
Bills receivable.....	113,032.39
Due from agents.....	2,105,272.87
Due from solvent companies and individuals.....	187,640.56
Net traffic balances due from other companies.....	None.
Other cash assets.....	570,988.93

---

Total cash and current assets..... 9,508,177.39

## Current liabilities accrued to and including March 31, 1902:

Receiver's certificates.....	None.
Loans and bills payable.....	None.
Audited vouchers and accounts.....	2,285,389.05
Wages and salaries.....	1,549,526.92
Net traffic balances due to other companies.....	379,605.00
Dividends not called for.....	8,057.25
Matured interest coupons unpaid..	848,966.27
Rents.....	3,000
Miscellaneous .....	15,660.00
Dividend declared payable April 4, 1902.....	391,912.50

---

Total current liabilities..... 5,482,116.99

Mr. BLAIR: Is that for the Michigan line or for the entire system?

Mr. BUTTERFIELD: I suppose it is the entire system, that is the report that was called for.

407 On behalf of the Ann Arbor Railroad Company I desire to offer in evidence the table appearing on page 31 of the original report to the State board of assessors for the year 1902, filed by that company.

## Cash and current assets available for payment of current liabilities:

Cash .....	195,725.71
Bills receivable....	
Due from agents.....	124,591.11
Due from solvent companies and individuals.....	243,039.22
Net traffic balances due from other companies.....	

---

Total cash current assets..... 563,356.04

## Current liabilities accrued to and including April 14, 1902:

Receiver's certificates .....	
Loans and bills payable.....	
Audited vouchers and accounts.....	222,439.83
Wages and salaries .....	60,024.85
Net traffic balances due to other companies.....	17,957.92
Dividends not called for.....	
Matured interest coupons unpaid .....	76,890.00
Rents due April 14th.....	
Miscellaneous .....	107,000.55

---

Total current liabilities..... 377,420.15

On behalf of the Sault Ste. Marie Bridge Company we offer the table appearing on page 31 in evidence, being the report to the State board of assessors for the year 1902 as follows:

## Cash and current assets available for payment of current liabilities:

408 *Cash and current assets available for the payment of current liabilities:*

Cash .....	5,894.07
Bills receivable.....	
Due from agents.....	
Due from solvent companies and individuals.....	
Net traffic balances due from other companies.....	9,380.93
Other cash assets.....	

---

Total cash and current assets..... 15,275

## Current liabilities accrued to and including April 14, 1902:

Receiver's certificates ...	
Loans and bills payable.....	
Audited vouchers and accounts.....	
Wages and salaries .....	
Net traffic balances due to other companies.....	
Dividends not called for.....	
Matured interest coupons unpaid.....	
Rents due April 14th .....	
Miscellaneous, accrued interest.....	11,250.00

---

Total current liabilities..... 11,250.00

On behalf of the Pontiac, Oxford & Northern Railroad Company, I offer in evidence table appearing on page 31 of the original report of that company to the State board of assessors for the year 1902 as follows:

Cash and current assets available for the payment of current liabilities:

409 (Hereafter I will not read the items blank)

Cash .....	32,516.22
Due from agents.....	11,211.45
Due from solvent companies and individuals.....	3,190.31
Total cash and current assets.....	46,917.98

Current liabilities accrued to and including April 14, 1902:

Audited vouchers and accounts, together with wages and salaries.....	23,930.44
Net traffic balances due to other companies.....	213.68
Total current liabilities.....	24,144.12

Mr. BLAIR: I wish you would state, if you will, as you introduce these in evidence, which of these roads are interstate roads and which are wholly within the State.

Mr. BUTTERFIELD: I will to the best of my knowledge.

On behalf of the Manistee & North-eastern Railroad Company I offer in evidence the table appearing on page 31 of its original report to the State board of assessors for the year 1902, and I think this is wholly within the State of Michigan.

Cash and current assets available for the payment of current liabilities:

Cash .....	1,310.39
Due from agents .....	14,646.08
Due from solvent companies and individuals.....	8,028.46
Other cash assets.....	51.39
Total cash and current assets.....	24,036.32

410 Current liabilities accrued to and including June 30, 1902:

Audited vouchers and accounts .....	44,493.67
Wages and salaries. ....	600.88
Unfunded debt.....	1,471,361.50
Total current liabilities.....	1,516,456.05

On behalf of the Marquette & South-eastern Railroad Company, which I think is within the State, I offer in evidence the table appearing on page 31 of its original report to the State board of assessors, for the year 1902:

Cash .....	2,890.39
Due from solvent companies and individuals.....	1,013.33

Total cash and current assets.....	3,912.72
------------------------------------	----------

Current liabilities accrued to and including April 14, 1902:

Wages and salaries.....	1,361.47
Cleveland Cliffs Iron Company treasurer.....	552,287.67

Total current liabilities.....	553,649.14
--------------------------------	------------

On behalf of the Minneapolis, St. Paul & Sault Ste. Marie Railroad Company which I think is an interstate road, I offer in evidence the table appearing on page 31 of its original report to the State board of assessors, for the year 1902.

Cash and current assets available for the payment of current liabilities:

Cash.....	1,196,152.49
Bills receivable.....	1,971.54
Due from agents.....	336,915.11
411 Due from solvent companies and individuals...	264,212.00
Net traffic balances due from other companies..	154,271.39

Total cash and current assets .....	1,953,522.53
-------------------------------------	--------------

Current liabilities accrued to and including April 14, 1902:

Audited vouchers and accounts .....	492,072.45
Wages and salaries.....	265,536.92
Matured interest coupons unpaid including coupons due July 1st.....	624,140.00
Rents due July 1st.....	2,922.56
Miscellaneous .....	175,110.11

Total cash liabilities.....	1,559,782.04
-----------------------------	--------------

On behalf of the Munising Railway Company, I offer in evidence the table appearing on page 31 of its report to the State board of assessors for the year 1902 as follows, and this is wholly in this State I think.



Cash and current assets available for the payment of current liabilities:

Cash .....	2,675.79
Bills receivable.....	464.29
Due from agents.....	2,002.22
Due from solvent companies and individuals.....	2,719.37
Other cash assets.....	194.96
Total cash and current assets.....	8,056.63

Current liabilities accrued to and including April 14, 1902 :

Loans and bills payable.....	532,120.12
Audited vouchers and accounts.....	5,145.28
412 Wages and salaries.....	8,682.23
Net traffic balances due to other companies.....	2,013.29
Miscellaneous.....	2,075.35
Total current liabilities.....	550,036.27

On behalf of the Wisconsin & Michigan, which is an interstate road, I offer in evidence the table appearing on page 31 of its original report to the State board of assessors for the year 1902 as follows:

Cash and current assets available for the payment of current liabilities :

Cash .....	3,878.32
Due from agents.....	2,431.39
Due from solvent companies and individuals.....	36,997.18
Other cash assets.....	142,073.63

Total cash and current assets..... 185,380.52

Current liabilities accrued to and including April 14, 1902 :

Loans and bills payable.....	91,890.32
Audited vouchers and accounts.....	13,344.96
Wages and salaries.....	4,474.65
Net traffic balances due to other companies.....	1,886.74
Matured interest coupons unpaid, including coupons due April 14th.....	266,350.00
Miscellaneous.....	209,874.55

Total current liabilities..... 587,821.22

On behalf of the Lake Superior & Ishpeming Railroad Company, which I think is not interstate, I offer in evidence the table appearing on page 31 of its report to the State board of assessors for the year 1902.

Cash and current assets available for the payment of current liabilities :

Cash .....	1,580.73
Due from agents.....	82.65
Due from solvent companies and individuals.....	13,897.80
Net traffic balances due from other companies.....	304.57

Total cash and current assets..... 15,865.75

Current liabilities accrued to and including April 14, 1902 :

Loans and bills payable.....	143,750.00
Audited vouchers and accounts.....	1,186.07
Wages and salaries.....	11,997.32
Taxes and suspense.....	2,207.24
W. G. Pollock, treasurer.....	19,705.58

Total ..... 178,846.21

On behalf of the Chicago, Milwaukee & St. Paul Railway Company, I offer in evidence the table appearing on page 31 of its report to the State board of assessors for the year 1902, and that is an interstate road.

Cash and current assets available for the payment of current liabilities :

Cash on deposit and on hand.....	15,379,858.73
Due from agents and conductors.....	752,478.76

414 Mr. BLAIR: I object to any evidence with reference to the credits of non-resident companies, on the ground that the credits would follow the domicile of the company.

Mr. BUTTERFIELD :

Due from solvent companies and individuals, including net traffic balances due from other companies...	511,919.57
United States Government.....	121,054.44

Total cash and current assets..... 16,765,311.50

Current liabilities accrued to and including April 30, 1902 :

Audited vouchers and accounts, together with wages and salaries.....	3,099,563.02
Dividends not called for.....	87,338.58
Matured interest coupons unpaid, including coupons due April 30th.....	100,722.50

Total current liabilities ..... 3,287,624.10

On behalf of the Duluth, South Shore & Atlantic I offer in evidence the table appearing on page 31 of the report to the State board of assessors for the year 1902, and this is an interstate road I suppose.

Cash and current assets available for the payment of current liabilities :

Cash .....	69,922.88
Bills receivable.....	113.85
Due from agents.....	67,856.85
Due from solvent companies and individuals.....	213,671.75
Net traffic balances due from other companies.....	27,096.70

Total cash and current assets..... 378,660.03

Current liabilities accrued to and including June 30, 1902 :

415 Rents and bills payable.....	2,257,275.18
Audited vouchers and accounts.....	521,937.87
Wages and salaries.....	145,776.60

Total current liabilities ..... 2,924,987.67

On behalf of the Mineral Range Railroad Company I offer in evidence the table appearing on page 31 of its report to the State board of assessors for the year 1902, and I think this is wholly within the State of Michigan.

Cash and current assets available for the payment of current liabilities :

Cash.....	32,039.61
Due from agents .....	15,617.80
Due from solvent companies and individuals.. ..	89,194.27

Total cash and current assets..... 136,851.68

Current liabilities accrued to and including June 30, 1902 :

Audited vouchers and accounts .....	158,403.75
Wages and salaries .....	28,461.80
Net traffic balances due to other companies.....	26,156.41

Total current liabilities ..... 213,021.96

On behalf of the Pere Marquette railroad, which is an interstate road, I offer in evidence the table appearing upon page 31 of the original report to the State board of assessors for the year 1902.

## Cash and current assets available for the payment of current liabilities :

	Cash.....	31,082.79
416	Bills receivable .....	25,109.85
	Due from agents .....	639,180.88
	Due from solvent companies and individuals .....	452,172.56
	Miscellaneous.....	388,728.51

Total cash and current assets ..... 1,536,274.59

## Current liabilities accrued to and including April 14, 1902 :

	Loans and bills payable.....	22,000.00
	Audited vouchers and accounts.....	968,922.04
	Net traffic balances due to other companies.....	180,244.28
	Dividends not called for .....	2,310.00
	Matured interest coupons unpaid including coupons due April 14th.....	38,144.85

Total current liabilities ..... 1,211,621.17

On behalf of the Grand Rapids & Indiana Railway Company, which is an interstate road, I offer in evidence the table appearing on page 31 of its report to the State board of assessors for the year 1902.

## Cash and current assets available for the payment of current liabilities :

	Cash.....	545,048.92
	Due from agents .....	164,398.80
	Due from solvent companies and individuals.....	79,279.03
	Net traffic balances due from other companies.....	62,515.26

Total cash and current assets ..... 851,242.01

## Current liabilities accrued to and including June 30, 1902 :

	Audited vouchers and accounts .....	395,765.39
417	Wages and salaries.....	129,729.00
	Dividends not called for.....	225.00
	Matured interest coupons unpaid, including coupons due July 1st.....	117,360.00
	Rents due June 30th.....	28,925.06
	Miscellaneous.....	86,579.17

Total current liabilities..... 758,583.56

On behalf of the Escanaba & Lake Superior Railway Company I offer in evidence the table appearing on page 31 of its original report to the State board of assessors for the year 1902.

## Cash and current assets available for the payment of current liabilities :

Cash .....	23,736.45
Due from insolvent companies and individuals.....	6,987.66
Total cash and current assets.....	30,724.11

## Current liabilities accrued to and including April 14, 1902 :

Loans and bills payable .....	507,057.82
Wages and salaries.....	4,200.18
Miscellaneous.....	20,277.05
Total current liabilities.....	531,535.05

On behalf of the Michigan Central Railroad Company I offer in evidence the table appearing on page 31 of its report to the State board of assessors for the year 1902 :

## Cash and current assets available for the payment of current liabilities :

418 Cash .....	1,413,340.97
Bills receivable.....	17,000.00
Due from agents.....	75,951.38
Due from solvent companies and individuals.....	345,487.51
Net traffic balances due from other companies.....	335,754.71
Total cash and current assets.....	2,187,534.57

## Current liabilities accrued to and including June 30, 1902 :

Audited vouchers and accounts.....	1,070,558.71
Wages and salaries.....	141,973.99
Dividends not called for, which includes dividend of \$374,760 payable July 29, 1902.....	381,375.00
Matured interest coupons unpaid including coupons due July 1st.....	34,815.00
Miscellaneous .....	1,732,583.96
Total current liabilities.....	3,361,306.66

On behalf of the Copper Range Railroad Company, which is wholly within the State of Michigan, I offer in evidence the table appearing on page 31 of its report to the State board of assessors for the year 1902.

Cash and current assets available for the payment of current liabilities:

Cash.....	23,439.36
Due from agents.....	5,649.32
Due from solvent companies and individuals.....	33,650.94

Total cash and current assets.....	62,739.62
------------------------------------	-----------

Current liabilities accrued to and including April 14, 1902:

419    Loans and bills payable.....	39,867.75
Audited vouchers and accounts.....	114,113.43
Net traffic balances due to other companies.....	7,698.09

Total current liabilities.....	161,679.27
--------------------------------	------------

MR. STANLEY: On behalf of the Detroit, Grand Haven & Milwaukee Railway Company, a railroad entirely within the State of Michigan, I read from its report to the board of assessors found on page 31 for the year 1902:

Cash and current assets available for the payment of current liabilities:

Cash on hand at agency in London, England.....	2,121.72
Bills receivable.....	
Due from agents.....	
Due from solvent companies and individuals.....	5,396.24
Net traffic balances due from other companies.....	
Other cash assets.....	2,204,302.40

Total cash and current assets.....	2,211,820.36
------------------------------------	--------------

Balance current liabilities.....	188,234.67
----------------------------------	------------

Total.....	2,350,055.03
------------	--------------

Receiver's certificates, loans and bills payable.....	
Audited vouchers and accounts.....	424,958.73
Wages and net traffic balances and dividends.....	
Matured interest coupons unpaid.....	5,793.90
Rents.....	
Miscellaneous.....	1,919,302.40

420    On behalf of the Toledo, Saginaw & Muskegon Railroad Company, a railroad entirely within the State of Michigan, I offer in evidence its report to the State board of assessors found on page 31 for the year 1902.

Due from solvent companies and individuals.....	209.91
Other cash assets.....	488,580.41
Total.....	488,790.32
Balance.....	394,725.39
Making a total of.....	883,515.71
Audited vouchers and accounts.....	102,000.00
Matured coupons.....	394,935.30
Miscellaneous.....	386,580.41
Total of current liabilities.....	883,515.71

Now the St. Clair Tunnel Company, a corporation having a tunnel extending from Port Huron in Michigan to Sarnia in Canada under the St. Clair river, and is therefore an interstate road, I offer in evidence its report.

Due from solvent companies and individuals.....	1,187.92
Audited vouchers and accounts.....	698.53
Balance of cash assets.....	1,189.39

On behalf of the Grand Trunk Western Railway Company, an interstate road, I offer its report :

Cash, June 30, 1902, reported in personal property as of the 14th of April, 1902, on page 7 of the following reports :

G. T. W.....	5,000
D. G. H. & M.....	4,500
421 C. D. G. J. T. & J.....	1,200
Mal.....	1,000
C. S. & M.....	1,300
T. S. & M.....	1,000

Total.....	14,000
------------	--------

Due from solvent companies and individuals.....	480,880.44
Other cash assets.....	30,277.85

Total....	523,031.57
-----------	------------

Liabilities :

Audited vouchers and accounts.....	169,932.10
Matured interest coupons.....	218,803.04
Miscellaneous.....	30,277.85

Total of liabilities.....	419,012.99
---------------------------	------------

Balance of cash assets.....	104,018.58
-----------------------------	------------



Mr. WYKES: I understand there are some of the bills of complaint that do not make any specific allegations as to the inclusion of credits. As to those we object to the testimony that has gone in, read from the reports, and move to have it stricken out.

422 "F. O. GULLIFER being recalled on the part of the complainant, testified as follows:

Direct examination by Mr. ANGELL:

Q. Since yesterday have you been able to ascertain whether any notices of the increase in valuation were sent out either to the Lake Shore, or the South Shore Company by the board of State tax assessors between the 7th of January and the 15th?

A. I find that on January 8th letters were sent to each one of the independent roads, I guess you would call them, controlled by the Lake Shore, stating that the assessment had been made against that particular road, the assessment of the road having formerly been included in the assessment of the Lake Shore, that is, all the Lake Shore properties have been assessed as one property. Also that a letter was sent to the Lake Shore explaining to them this fact, that the independent roads were now assessed and that their assessment had been reduced so much; and I also find that letters of the same tenor were sent January 8th to the Michigan Central Railroad Company and to the different roads controlled by that company, and I also find a memorandum that Mr. Metheany, the auditor of the Grand Rapids and Indiana railroad and Mr. O'Brien, the counsel, waived any such notice as to franchises or to right controlled by the Grand Rapids & Indiana.

Q. Was there any notice sent out to the Lake Shore Company or to any of its subsidiary companies after January 12th and before January 16th?

A. I don't find any record of any such letters having been sent.

Q. Of any kind whatever?

A. I don't think so.

Q. Was there any notice of any kind whatever sent to the Duluth, South Shore & Atlantic Railway Company between the 7th  
423 day of January and the 16th day of January, 1903, so far as you can ascertain?

A. I don't find any record of any such notice.

Q. So far as you know of your own knowledge, independent of the record, you know of no notices to either the South Shore or the Lake Shore Companies within the periods I have spoken of respectively, do you, between the 12th of January and the 16th?

A. No, sir; there is no record of that fact, and I don't remember of any such notice being sent out; still I do have a dim recollection of certain letters having been sent to some of these companies, but there is no record of it.

Q. Have you any recollection, dim or otherwise, of any letters being sent to the Lake Shore Company, or any of the subsidiary

companies between the 12th, the day we had the hearing on the seventeen million valuation, and the 16th, the day the rolls were completed.

A. No, sir.

\* \* \* \* \*

Cross-examination by Mr. WYKES:

Q. The board of assessors during this review kept a stenographic copy of everything that took place, didn't they?

A. I think they did.

Q. That included all the arguments of counsel and the representatives of the railroad companies, and also the statements made by the assessors?

A. I don't know that it is as complete as that. Our Mr. Wilkins took it.

Q. He was there for the purpose of taking everything?

A. He was there for the purpose of taking the testimony.

Q. And if the board of assessors made any statements to the Lake Shore representatives, or to the representative of the Duluth South Shore & Atlantic, it would appear there?

424 A. I think so.

Q. And those were bound and at the present time constitute the public records of your office?

A. Yes, sir. I don't know that he ever wrote up his full notes of that review.

Q. Don't you know that it was all written up and bound in five large volumes?

A. Yes, sir; I think it was. I think it is included in the five large volumes."

"Mr. BUTTERFIELD: I desire to offer in evidence portion of the report of the chief statistician of manufacturers of the United States on street and electric railways for year ending June 30, 1902, prepared in accordance with the provisions of section seven of act of Congress of March 6th, 1902. First I offer a part of page 21.

Mr. WYKES: We object to this as incompetent, irrelevant and immaterial and not the best evidence.

Mr. BUTTERFIELD: It contains the following information for the State of Michigan: That there were twenty-four such railways.

Mr. WYKES (interrupting): I understand you are reading from a printed report?

Mr. BUTTERFIELD: I am reading from the official report.

Mr. WYKES: It is a printed copy.

Mr. BUTTERFIELD: It is a printed document and it bears the facsimile signature of the chief statistician for manufactures of the United States; it shows that in Michigan there were twenty-four such railways for the period covered by the report to which I have referred; that the earnings from operation in the State of Michigan were as follows during that period:

425	From passengers .....	\$6,014,842.00
	From chartered cars.....	20,313.00
	From freight.....	47,904.00
	From mail .....	11,143.00
	From express.....	153,224.00
	From sale of electric current for light and power .....	195,428.00
	From miscellaneous sources.....	51,837.00
	Making a total of.....	<u>\$6,494,691.00</u>

From page 48 the following information for the State of Michigan for the period aforesaid ; this is a table and I will have to read it in the form of a table.

Mr. WYKES : Everything that is taken or read from this book is subject to the objection.

Mr. BUTTERFIELD : It reads as follows :

(Here follows table marked p. 426.)

**FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED**



427 I read in evidence also from the same report on page 158 the total car mileage of said companies for the period covered by the report of freight, mail, express and other cars exclusive of passenger cars was, for the State of Michigan, \$713,375.00.

Mr. WYKES: We object to this and move to strike out everything that was read from the book because it does not appear that it was officially prepared in accordance with the statute that Mr. Butterfield has referred to, or any other statute.

We also move to strike out everything that relates to urban as distinguished from interurban street railways on the ground that it is incompetent, irrelevant and immaterial.

We also move to strike out the entire because there is no data furnished from which to separate the urban from the interurban railways.

We also move to strike out everything which was taken from the report of this statistician or commission or whatever it is claimed to be where the report covered a period beyond the time of the enactment of act 173, which is the statute under which these railroads are taxed.

We object to everything which has been read upon the ground that it does not appear that these roads were not organized under the general railroad law of the State of Michigan, and we make the assertion in regard to at least six of them that they are organized under the general railroad law.

(Book referred to marked Exhibit A, November 25th.) "

" We move to strike out all the evidence taken to show that the general assessments of the general properties of the State are undervalued for the reason that it has not been shown that any undervaluations which may exist, or which there may be some evidence to indicate does exist are the result of fraud, and for the further reason that it does not appear that they are the result of any

428 intentional action on the part of the assessing officers."

429 Page 125, EXHIBIT F, Attached to the Bill Offered by Complainant.

The defendant here objects to the introduction of Exhibit F and to each and every part thereof and to all testimony based upon or explaining the same as incompetent, irrelevant and immaterial.

### Jackson County.

Mr. C. A. BLAIR: May it please this honorable board—I have been a very interested listener to the discussions which have taken place here, but I have been somewhat surprised at the fact that one matter which seemed to have escaped attention entirely was the statute governing the action of this board. I had supposed in the past, as I supposed when I came here, that the statute regulated the proceedings of this board, its *modus operandi*, in determining the

equalization between the different counties of this State, and I still adhere to that opinion.

This board is a constitutional board provided for by the constitution of this State over fifty years ago, created in detail by the legislature of 1851, and its duties defined at that time. At the time this board was created Michigan's constitution was vastly different from what it is to-day. The city of Detroit was a comparatively small city; the city of Grand Rapids was still in the womb of the future. The grand industries of this State were lying dormant, and this act is to be construed relative to that situation which confronted the legislature when it passed this act. That legislature provided that this board should make an equalization between the counties of this State according to certain plans, which, I submit, are plainly mapped out in the act itself. It says in the first place that so far as real estate is concerned, its equalization is to be according to location, to soil, to improvements, to production, to manufactories. Then comes a semi-colon; they have finished so far as the equalization with reference to real property is concerned. After the semi-colon is taken up personal property. And it is to be determined by this board then whether the personal property of this State has been uniformly assessed. And how is that to be determined? According to that statistics of the State and information from any source open to this board. Plainly marking out two different systems of procedure, the one based upon the open, notorious and well defined general  
 430 attributes and aspects of the country; and the other upon the information which may be gathered from statistics and from the other information.

You men who compose this board are State's men, in distinction to county men. You are elected to offices which you hold because you are men of State reputation, supposed to understand the interests of the State, supposed to know those great general features which characterize the State. And so it is that matter is left to this board to determine from those general characteristics how it shall equalize those counties.

And they are to be equalized relatively. And I maintain—and I contend that the law bears me out in that contention—that it is not the duty of this board to undertake to ascertain what the true cash value of a dollar's worth of property is in a single county in the State of Michigan.

431 Page 270, EXHIBIT F, Offered by Complainant.

Correspondence with Attorney General Oren Regarding the Powers and Duties of the State Board of Equalization.

LANSING, August 23, 1903.

Hon. Horace M. Orren, attorney general, Lansing, Mich.

DEAR SIR: At the recent meeting of the State board of equalization, several of the representatives appearing at the hearing discussed



before the board the proper method to equalize the several counties. Some maintained that should be done by bringing each county to the cash value basis, and as though the properties of the several counties were assessed at cash value; while others maintained that the assessments as returned should only be used and a relative equalization made between the counties irrespective of the cash value basis, and whether or not the assessments had been made at cash value. The former claim the constitution, article 14, sections 12 and 13, is controlling while the latter cite section 132 of the Compiled Laws. In support of the former position, it is claimed that if it is made on the cash value basis equalization works its own solution and the statute quoted is met; and if the assessments had been made at cash value then equalization is maintained and no necessity exists to do anything further to comply with the terms of this statute. Much argument has been presented in support of these two positions, the trend of which you, no doubt, understand; and in view of these widely different positions, will you kindly advise us our duty in the premises.

Yours respectfully,

J. E. HAMMOND,  
Secretary State Board of Equalization.

432

Page 270, EXHIBIT F, Offered by Complainant.

LANSING, Sept. 4, 1901.

Hon. Jason E. Hammond, secretary State board of equalization,  
Lansing, Mich.

DEAR SIR: I am in receipt of your letter of the 26th inst., written at the direction of the State board of equalization, and asking my opinion on certain questions hereinafter referred to; and in reply, I beg leave to submit the following:

The duty of the State board of equalization, as expressed in section 132 C. L. 1897, is after having determined whether the assessments of taxable property in the various counties of the State are relatively unequal in their valuations, to add to or deduct from these aggregate valuations such percentage as will produce relative equal and uniform valuations between the several counties.

A compliance with this duty necessarily implies the use of a standard of valuation, a uniform measure by which each assessment is to be gauged and judged. Without such a standard, in terms of which each aggregate assessment can be expressed, relative equality would be impossible of attainment. Our constitution has provided this standard in section 12 of article 14 as follows: "All assessments hereafter authorized shall be on property at its cash value."

The basis of a lawful assessment is the cash value of the property assessed, and if above or below this standard the measure of variation is the measure of the duty of the State board of equalization in reducing the several aggregate assessments to a uniform basis.

It is suggested, however, that equality and uniformity may be equally attained by reducing each of the aggregate assessments, not to a basis of cash valuation, but to a basis of some certain percentage less than cash valuation. In other words, having determined the percentage of variation of each assessment from cash value, it

would be possible to reduce each assessment to a basis of 50  
433 per cent., or one per cent., or any per cent. of cash value with resultant equalized values having the same relative equality and uniformity as if each assessment had been reduced to cash value, and I understand the question contained in your letter to be whether some mean percentage of cash value less than full cash value may lawfully be taken by your board as the basis of equalization, and by proper additions and subtractions each aggregate assessment be brought to that basis instead of to the full cash value basis.

If the sole purpose of State equalization was to obtain a basis for the apportionment of State taxes among the several counties, it might plausibly be argued that the board of equalization had full latitude to fix its own basis of equalization; for, with any basis whatever, if uniformly adhered to, the counties would in each case occupy the same relative position as respects the allotment of State taxes. But there is at least one other purpose for State equalization than the apportionment of State taxes, and this purpose indicates unmistakably that the duty of the State board of equalization is not alone to provide a basis for the distribution of the State burdens among the counties in proportion to the taxable property held in each; but, that it is required at the same time and in the same proceeding, to determine the aggregate valuation of the taxable properties of the State. I would refer you to section 1807 C. L. 1897 as amended, where it — provided that there shall be assessed in each year upon the taxable property of the State as fixed by the State board of equalization, for the use and maintenance of the University of Michigan, the sum of one-fourth of a mill on each dollar of said taxable property.

By this section it is seen that the valuation as fixed by the State board of equalization is made the basis for the determination of the aggregate of an important State tax; and if, to the board of  
434 equalization was given the latitude of equalizing on any basis they might select less than cash value, they would have the power practically to wipe out this tax; for, granting the latitude, a valid equalization might be made by reducing the valuation of Wayne county to one dollar, Houghton county to 50 cents and other counties in proportion; or by taking 50 per cent. or 75 per cent. of cash value as the basis, the tax might be reduced a half or a quarter from what it would be if cash value was the basis.

But it was manifestly the intention of the legislature, that each dollar of taxable property as found by the board of equalization should bear its quarter of a mill tax, and that the valuation upon which this tax was based should be the valuation of the constitution, viz., cash value. The finding of the board of equalization

under the operation of this act becomes an assessment for the purpose of levying the university tax; and for the board of equalization to make this assessment at less than cash value would be a manifest violation of the constitution.

In this act, we have, therefore, a positive inhibition against equalizing in any other way than by reducing each of the several aggregate assessments to its equivalent on a cash value basis, and thus at the same time establishing the ratios between the several counties and determining the true aggregate value of the taxable property of the State.

That it is the theory and manifest intent of our equalization laws that equalization should be made by reducing or raising faulty assessments to their proper equivalent in terms of cash value is made evident in other ways. Prior to the creation of a State board of equalization under the constitution of 1850, there were county boards of equalization, consisting at first of the county commissioners, and later, after the adoption of the supervisor systems, of the county board of supervisors.

435 Revised Statutes of 1838, pages 82 and 83.  
Revised Statutes of 1846, page 106.

These boards were required to review the assessor's valuation of the real estate in each township and to equalize the same by adding thereto or deducting therefrom such per centum as would in their judgment produce, relatively, and equal and uniform valuation of the real estate of the county.

The aggregate valuation of the taxable property of the county as taken from the corrected valuation of the assessment rolls was certified to the auditor general, and the latter apportioned the State tax according to these valuations.

These boards of equalization were acting under laws that required assessments to be at cash value, and although there can be found no positive provision that equalization should be made by bringing all real estate to a cash value basis, yet unless such was the intent the apportionment of State taxes was bound to be unfair and unequal. One county might have equalized on a basis of one-tenth of, another at full cash value. It is inconceivable that all of the counties were not, by implication at least, required to conform to the uniform standard which was required for assessment.

After the establishment of the State board of equalization under the constitution of 1850, it is true that it was held, as to county equalization, that the board of supervisors might adopt their own means of reaching the result, and that a tax payer could not complain, of an equalization at less than cash value inasmuch as he would not be unjustly affected by a uniform assessment at or a uniform reduction on equalization to less than cash value.

Case *vs. Dean*, 16 Mich., 12.

*Williams vs. Mears*, 61 Mich. 86.

But these cases can not be taken as authority in instances where equalization serves other purposes than apportionment of  
436 taxes among the districts whose assessments are equalized.

They can not be accepted even as indicating the duty of equalizing officers, but merely as enunciating the proposition that unless a party is prejudiced by the unauthorized conduct of an officer he is not entitled to complain.

As indicating that *that* it is the policy of our constitution and laws to impose upon equalizing boards the duty of bringing assessments to a cash value standard, I would call your attention to other provisions of our laws.

In the act under which the State board of equalization acts, they are required to take into consideration location, soil, improvements, and manufactories, and also statistics of the State and any information they can gather.

By the State tax commission act the board of tax commissioners, which is charged with the duty of seeing that assessments are made on the basis of actual cash value, is required to furnish information and assist the State board of equalization. While this fact may not be accepted as indicating the proper standard for equalization, yet it is hardly to be conceived that the legislature would have required this assistance to be rendered except to give the board of equalization more accurate information as to the true standard of assessment and the deviation therefrom in the several counties in the State, and all to the end that the final judgment of the State board of equalization might express the more accurately the true valuation of the taxable properties of the State.

By the late constitutional amendments and the legislation based thereon, certain taxes are required to be assessed at a rate equivalent to the average rate of taxation obtaining in the State at large. It may be premature to say that the valuations fixed by the State board of equalization may be taken into consideration by the board  
437 of assessors in determining this average rate, and yet a finding by the board of assessors that would indicate that they had taken as their basis for computation an aggregate valuation widely divergent from that found by the State board of equalization, would be to invite controversy and bring about an uncertainty, which an adherence to a cash value standard in both assessment and equalization would obviate. The even balance of our whole taxation system is so intimately connected with the idea of cash valuation, that any divergence from that standard destroys the uniformity and equality which our constitution and laws seek to preserve.

For all these reasons, I would advise the board of equalization that it is its duty, according to its best judgment and information, so to equalize the various aggregate assessments that are submitted to its consideration and review, that the results will express as near as possible, the actual cash value of the taxable properties of each county in the State; and for it to knowingly do otherwise, would,

in my judgment, be a gross disregard of the duties that are imposed upon it by the constitution and laws of this State.

Very respectfully,

HORACE M. OREN,  
Attorney General.

LANSING, August 25, 1901.

Hon. Horace M. Oren, attorney general, Lansing, Mich.

DEAR SIR: During the preliminary session of the State board of equalization held for the purpose of permitting representatives of the various counties of the State to present their views concerning the valuations which should be put upon their respective counties, it developed that there was quite a difference of opinion held as to the duty and power of the State board of equalization in the matter of determining relative and total values.

438 We find it held by some students of our State constitution and statutes that the State board of equalization has no power to raise the total assessed value of the State as determined by the local assessors, but must accept the total thus found and distributed it as equally as in the judgment of the board it should be distributed to the various counties of the State. It is held by others that the board should make such changes as in their judgment will bring the valuation of the State to what is termed "cash value," and that the board has full power to change any and all assessments reported to this board by the county assessors.

In view of this difference of opinion on a matter so important it seems best for us to secure your opinion as our legal adviser on such matters before proceeding further. Have we the power to determine the total valuation of the State regardless of the assessors' valuations, or are we to regard the assessments as a whole as having been concluded when the work of the assessors was concluded and computed, and is our duty and function confined to equalizing such assessments between the various counties?

Our next meeting is to be held September 16th and we would greatly appreciate having your opinion on the questions herein asked at that time if possible.

Very respectfully,

PERRY F. POWERS,  
Auditor General.

LANSING, September 16, 1901.

Hon. Perry F. Powers, auditor general, capitol.

DEAR SIR: Replying to your letter of August 25th, in which you state on behalf of the State board of equalization, that it was contended by certain advocates before the board at its last session that the board had no power to raise the total assessed value of the State as determined by the local assessors, but must accept the total thus found and distribute it as equally as in the judgment of the board it should be distributed, to the various coun-

439

ties of the State, and upon which contention my opinion is solicited. I have the honor to state as follows:—

In my previous opinion given to the board I have stated that it was the duty of the board to equalize on the basis of actual cash value as ascertained by the board from such information as the statute gives them the right to resort to, viz: location, soil, improvements, production, manufactories, statistics of the State, information furnished by the State tax commission, and from any other source. All assessments shall be equalized by adding or deducting from each such amount as will reduce them to a cash value basis. The aggregate total of the equalization may exceed or be less than the aggregate assessed valuation. If there was any basis for the claim that the aggregate equalized value could not be made to exceed the aggregate assessed valuation, there has been only one valid State equalization in the history of this State, viz. that of 1856, for in every equalization since, the aggregate has quite largely exceeded the aggregate assessment. I can see no possible basis for the contention referred to in your communication, and would advise the board that it should be disregarded.

Very respectfully,

HORACE M. OREN,  
Attorney General.

440 Having obtained this advice from the attorney general, the commissioners attended and addressed the meeting of the board of equalization, presented to the board their estimates of the values of the general properties of the State, and took an active part in the discussion before the board.

Protests were made before the board by representatives of various counties upon the ground that the reports of sales upon which the commissioners' deductions were based, were valueless or misleading, and that in many instances the estimates of values made by the commissioners were grossly extravagant.

Nowhere in the report of the proceedings of the board of equalization is there any statement of the basis of the board's valuation, that is to say, whether or not it attempted to determine actual values.

441 Page 282, EXHIBIT F, Offered by Complainant.

Communication from the State Board of Tax Commissioners.

Hon. State Board of Equalization.

GENTLEMEN: The board of State tax commissioners herewith present the information collected for the use of your board in the work of equalization now engaging your attention.

In this work, former boards of equalization were compelled to rely on their general knowledge of the value of property and of conditions existing in the State and on the statements of representatives



who appeared in behalf of their respective counties. These representatives, in many cases, presented arguments carefully and ingeniously prepared, calculated to mislead the boards, and which were a hindrance instead of a help to them in their efforts to arrive at true values and relative assessments.

It is not necessary to say that equalization under such circumstances was mere guess-work, imperfect and altogether unsatisfactory. The legislature understood this situation and made it the duty of the board to be present at your meetings and give such information as you might require. To meet this duty, we have gathered statistics and sought information to assist your board to a reasonable knowledge at least, of the value of the property of the State and of the manner of its assessment by the supervisors and assessors, so that the work of equalizing the State this year may proceed on an intelligent basis and the result be reasonably satisfactory to yourselves and the people.

As your board would not meet until August 19th, it was necessary for us to anticipate as far as possible your wants and proceed without instruction or suggestion from you, to formulate a plan and gather such data for your information as the limited time at our command would permit.

We have been criticised for the expenditure of a large amount of money in this work but, we trust, by those only who speak  
442 from prejudice or ignorance of the character and extent of the task undertaken.

We believe you know the difficulties under which the work was done; that the personnel of even our original board of three members was not settled until May 22nd; that the assessment rolls of the townships and cities of this State were not completed until about the first day of June and supervision of this assessment required our entire time until the same was finished; that the work was new and never before conceived or attempted in our State; that the selection of men qualified to examine and express an intelligent opinion of the value of different kinds of property was not an easy task, and that the early date fixed by law for the meeting of your board, when our field work must be finished and its results tabulated, gave too little time for what may be called perfect work, or for its completion in a manner entirely satisfactory to us or to you who know the extent of the territory to be covered and the amount, character and value of property to be examined. And we shall be satisfied if our efforts are appreciated by your board and if the results prove valuable and help you to satisfactory conclusions.

Our board has the record of sales of real estate from all the counties of the State from July, 1898, to July, 1899, showing the names of the parties to each sale, the description of the property and the consideration of the sale as stated in the deed. We have also a record of the assessments of 1898, of the parcels of land described in the above transfers and by correspondence with the supervisors of the State might have learned the assessments of the same property



for the year 1901, and from these figures might have calculated the percentage of assessed valuations to the sale valuations in all, or nearly all, of the assessment districts of the State. But experience has taught us that it is not safe to accept the amount of money  
443 stated in deeds as the true considerations of the sales and that a percent. obtained by comparison of these considerations with the assessments of the property described would bring many erroneous results and is of little value. We therefore undertook to verify these considerations, or to prove a sufficient number of them to justify their use and at the same time to learn the value of a sufficient number of other parcels of land in each assessment district so that we might by comparison of these values with the assessments know still more of the work of the assessing officers and the ratio of assessment to true value. We employed the best men we could find and known to be skilled in the work to be done. Many of them worked several months; almost every township in the assessment district was visited, its real estate examined, the consideration of a large number of sales inquired into and verified as far as possible and the value of its property in general ascertained by every means available. They made more than a cursory examination of the property of a township, village or city; they followed instructions and examined the property of an assessment district until they formed an intelligent and well founded judgment of the plan pursued and the character of the work of the assessing officer.

In the limited time at the disposal of the men, comparatively few of the large number of considerations could be proved by actual inquiry of the parties to the sales or even of outside persons having knowledge of the transactions; but much of the property was examined, its value ascertained or carefully estimated, and the judgment of our men is given as to whether from all circumstances and information obtainable the considerations stated in the deeds may reasonably be accepted as the true considerations of the sales.

From the figures thus obtained, we have found the ratio of assessments to sale value of property that is, the percentage which  
444 the assessments of a township bear to the considerations of the sales of real estate in such township. This percentage is for the year 1901, and is obtained by comparing the total considerations of the sales of a township with the total of the assessments of the property sold for said year. We present also a table showing the percentage which the assessment of the property of each township bears to the actual value of the property of such township according to the estimate or opinion of value by our men who examined the property.

From the cities of Detroit and Grand Rapids, we also have a record of a large number of recent sales, most of them made or recorded during the present year. The proving of the considerations of these sales was undertaken by correspondence with the parties to the sales, a report being asked from the parties to a sale as to the amount of money actually paid and received, or the true price for which the

sale was made. Our inquiries were generally answered and in such a manner as to justify the use of the information so obtained in calculating the percent, which the assessed valuation of the property of these cities bears to the cash value of the property. The figures thus received and the percentages obtained from them are herewith presented for your consideration.

We have found the cash value of each county of the State by finding the cash value separately of each township and assessment district in a county. To find the cash value of a township, we take the assessed valuation of a township and add to it an amount sufficient to bring it to cash value, the total of the cash value of the townships and assessment districts of a county is the cash value of a county.

We believe that taking the total sales or value of the properties examined in a given county, irrespective of the assessment district in which the lands sold or valued are situated, and calculating the percent, the same bears to the total assessment of the same lands, is not the correct method of obtaining the percent, which the assessments of a county as a whole bear to cash value. There is no such thing as an average per cent. for a county as a whole because the townships have different percents and are of widely different value, but the cash value of the several townships of a county must be figured out separately by applying to each its proper percents and the total of the townships so obtained is the value of the real estate of the county.

A different method has been employed to obtain the value of Upper Peninsula counties where the mines, *where the mines* are situated and forming to considerable extent the value of the counties.

The field-men sent to those counties made no effort to obtain the value of the mines, but confined their work to obtaining the value of the general properties of the counties and learning the assessment thereof, the same as in other parts of the State. Using the data thus obtained the value of the county was worked out by the plan explained above, but to this value is added the value of the mines as found by our board. To find the value of the mines, we used the method employed by this commission in its reviews of these mines in the fall of 1900, changing the same only as conditions have changed and considering the assessments made thereon.

The market value of the stocks of the copper mines is about the only data obtainable by which to learn the sale value or "usual selling price" of such a mine. The sale of stock is usually the only sale made of any part of or interest in a copper mine. The fluctuations and speculative conditions of the markets have been duly considered, and being free from all bias or selfish interest, we have ascertained their value as nearly, we believe, as can be done by anyone.

The assessment of the iron mines by the supervisors in the townships where located are accepted as correct, except in Gogebic county, in which county we have taken the values of the mines as

fixed by the tax commission in its reviews held there last year, and used other data collected by the commission.

Although your board have asked the attorney general of the State for his opinion and will doubtless be governed by it, we beg to say that in our opinion, equalization should be on the basis of "cash value." We urged this opinion at the meetings of your board and are now as firmly convinced as at that time that the proper equalization can be made only by placing the valuations of the counties of the State at their "cash value" as nearly as the same can be ascertained. The law of the State, we insist, recognizes no standard of value but "cash value," and no assessment roll is right or in conformity to law that does not list all the property of its assessment district and impress it all with its cash value, and the assessment rolls of the State are not in conformity to law if any one or more of them lack this requirement. The board of supervisors of a county should, in harmony with all law of equalization, equalize the assessment rolls of the townships by adding to the roll of each township an amount equal to the value of such of the property of the township as has been omitted from the roll or is placed thereon at a figure below its cash value, and by considering the rolls of all the townships and treating them all alike in this respect. And the State board of equalization should treat the counties of the State as a board of supervisors should treat the townships and assessment districts of a county. If each assessing officer of the State places upon his roll the same relative or proportionate  
447 part of the property of his district as appears on the rolls of all other districts, or assesses all the property of his district at the same relation to its cash value as does every other assessing officer of the State, it has been urged that the assessments of the State are relatively equal or that equalization can by this means be accomplished; but by such a plan each and every assessment roll in the State is wrong and equalization of the State on this basis is wrong and fails to comply with either the letter or the spirit of the law. It may truthfully be said of equalization on such a basis that no injustice is done because all are equally or to a like extent wrong. But how can it be known that all are equally or proportionately wrong except one first finds the figure or amount at which each would be right and then deducts from each the same relative amount or else reduces them all by the same per cent. We believe the constitution and statutes mean what they say, and we respectfully advise compliance with them on your part. We suggest that you find the amount that will represent the cash value of a county and save the trouble of deducting a percentage of this amount; let this amount stand as the figure at which the county is to be equalized and the total of these amounts is the proper cash value of the State and the amount at which it should be equalized.

Article XIV, section 12 of the State constitution provides that "all assessments authorized shall be on property at its cash value," and the general statute-, respecting the assessment of properties pro-

vide no other standard but impose the same in most mandatory terms. Section 13 following of said article provides that "the legislature shall provide for an equalization of assessments by a State board." It has so provided in creating your board. The legislature of this State has not only defined what is meant by "cash value," but in our judgment, has absolutely fixed a standard from which

no departure can be made in the assessments or equalization thereof, namely: "The words "cash value," whenever used in this act shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale and not at forced or auction sale."—Section 27 of the General Tax Laws. It provides further therein that the assessors shall consider, in determining that value, all things else tending to give value to the property to be assessed.

In other words, the assessor is required to find the worth of property by what it has been sold for and what it would be apt to sell for in the usual and ordinary way, the seller wanting to sell, not being forced, and the purchaser desiring to buy.

If all the assessing districts of a county were assessed at cash value, manifestly equalization of assessment of taxes in that county is attained; so it is in the State, if all the counties are assessed at cash value, equalization of assessments for State taxes is likewise attained. Equalization, when changes are made in the fixed amount of the total assessment, is only necessary, therefore, when the assessments are unequal; that is, make equal, as the word implies, by "equalization" an unequal condition if it exists. It follows, if all the properties are assessed at cash value, no change is necessary by equalization, for they are already equal or "equalized," and if not, they are to be made so through equalization. Since the constitution and statute of the State require property to be assessed at cash value and the constitution imposes equalization of those assessments, it must follow that equalization for State taxation purposes or any other, is attained and should be brought about on the cash basis of a county and no other; otherwise State supervision and authority is lending its aid to an unlawful proceeding.

We believe this to be in entire harmony with another statute of this State, Compiled Laws 132, defining your duties to "determine whether the relative value between the several counties is equal and uniform," and if the assessments "shall be determined relatively unequal you shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in such county or counties, such percentage as will produce relative, equal and uniform valuation between the several counties in the State." If the assessments then of the counties are determined to be above or below cash value (the only value of which in law we have any right to speak) then add to or deduct from the aggregate valuation of taxable property in their respective counties

such amount as will produce, relatively, equal and uniform cash valuation between all the counties. It follows, if it be determined that all the counties are below cash value (a condition well known to exist), that such percentage or amount must be added as will bring each to this cash valuation basis; and equalization certainly will be attained.

Some have urged that it is impossible to know the cash value of the several counties of the State, but we answer that it is just as difficult to arrive at any other valuation, so that a relative, equal and uniform assessment can be made. Equalization whether attempted at 75 per cent. or any other per cent. of value, must find common ground at cash value because the 100 per cent., the cash value, is the starting point for all percentages or computations. Thus reasoning, we will see that we are driven to the cash value basis as the only lawful standard by which to equalize the several counties of the State.

In brief, we have attempted to treat this State as one great assessing district and the several counties thereof as citizens having property subject to taxation, endeavored to learn the assessable cash value of the property of the "citizen" and bring it to the  
450 assessment roll according to the wealth of the holding to produce equal taxation among the several "citizens" of the one great district and secure equalization among the several counties. If one of these "citizens" is not assessed on the wealth of his holding or at cash value, then add such a percent. as would assess at cash value and equalization works its own solution.

With that as the center thought of our work we started out to know, as best the human mind could know, how the several hundred assessing officers were assessing the properties of the State. Since the end to be obtained is equalization between counties for State taxation purposes, necessarily we grouped the several assessing districts of a county together and treated the county as a unit and sought to learn the worth or cash value of each county by learning the worth or cash value of each assessing district therein.

We believe that cash value of property means the "usual selling price," or that which it could be sold for hereinbefore mentioned, and that the statute thus absolutely governed the course or plan to be adopted, namely, to learn that cash value of a sufficient and large number of properties of a given district, by getting at the actual selling price of same and what could be obtained therefor if sold, as the statute defines, and then learning how these same properties were assessed.

It was, of course, physically impossible to make an assessment of all the properties of the State, and we assumed, properly we believe, that the assessments of property in a given district were relatively equal and applying this rule determined how each assessing officer was assessing compared to "cash value."

The plan of equalization, above mentioned, being employed throughout in each assessing district and each county impressed with the same idea or thought, in our judgment, reached a common



451 basis, eminently fair to all. In fact, it is the only way for your or our board to reach cash value except by an assessment of all the properties of the State, at actual value—an undertaking manifestly impracticable or impossible to be performed. Accordingly we submit to your honorable board the tabulated sheets mentioned, showing, in our judgment, the cash value of the real estate of the several counties of the State and the respective assessment districts therein, treating cities as one assessment district. The amount of personal property as assessed also appears upon the sheets, to be considered or used as your board may deem proper.

Since the adjournment of your board we have gone over the work in a most painstaking manner, eliminated errors, rechecked and compiled the work and bring the result of our labors to you in as good, comprehensive form as possible.

It was obvious to the commission from the very start that we would not be able to furnish the information you might require unless we pursued the theory and policy above marked out; and we undertake to say, in the light of our constitution and statutes, that no other plan was possible or feasible; if there was any other, it has not come to us even as a suggestion from you, the many representatives appearing for the counties, or any one else; so we are resting in the belief that we have done our duty and performed a task of inestimable benefit, and never before attempted in the history of this or any other State.

Since the foregoing was written the opinion of the attorney general, given to your board respecting equalization at cash value, has come to our attention, and it is to be observed that it is along the above lines and supports the position taken by this commission.

A. F. FREEMAN.

WM. T. DUST.

IRA T. SAYRE.

J. C. M'LAUGHLIN.

MANVILLE JENKS.

452 *Table showing the percentage which the assessment of the property of each township bears to the actual value thereof according to the estimate or opinion of value by the field examiners in the employ of the board of State tax commissioners, included in the report of the board of State tax commissioners to the State board of equalization.*

*Offered by complainant.*

453 The following is a copy of the table relating to Alcona county contained in Exhibit F, page 289, being the report of the board of supervisors of the assessment and equalization of property in the several townships of Alcona county for 1901, to which is added a column showing the estimate of the field examiner of the percentage of assessed valuation to real value. The tables following that of Alcona county show only the percentages referred to, omitting the valuations as assessed and equalized as shown in the reports of the boards of supervisors, which reports do not contain the percentages referred to.

## Supervisors' Equalization—1901.

NOTE.—The county statements are printed as filed with the auditor general, except such additions of totals or other figures omitted from the originals as were elsewhere clearly intended. Through some misunderstanding three counties, Alcona, Leelanau and Muskegon, — equalized by deducting from or adding to the assessed value of the personal property as well as the real. Discrepancies which were evidently clerical are harmonized in the tabulation following the county tables herein, in accordance with the evident intent. The text of the certificate is omitted from all except the first county.—Sec.

## Alcona County.

## Statement of Acreage and Valuation in the Year 1901, Made in Pursuance of Section 136, Compiled Laws.

Township or ward.	Acres assessed.	Tax commission percentages.*	Valuation as assessed.		Total valuation as assessed.	Valuation as equalized.		Total valuation as equalized.
			Real estate.	Personal property.		Real estate.	Personal property.	
Alcona .....	35,791.37	72.8	\$36,710	\$122,440	\$159,150	\$36,710	\$122,440	\$159,150
Curtis.....	37,456.65	83.3	57,515	13,592	71,107	63,210	13,314	76,524
Caledonia ..	29,824.20	49.0	46,073	5,970	52,043	45,725	5,480	51,205
Gustin.....	20,457.36	87.5	131,972	19,820	151,792	131,833	19,516	151,349
Greenbush....	14,427.50	86.0	32,425	5,270	37,695	27,505	5,375	32,880
Harrisville....	18,261.14	72.0	236,542	67,179	303,721	238,832	67,929	306,761
Haynes.....	20,506.27	77.9	107,095	12,135	119,230	107,685	12,820	120,205
Hawes.....	43,116.87	87.0	45,770	8,252	54,022	45,790	8,252	54,042
Mikado.....	21,514.62	97.1	59,926	7,778	67,704	59,431	7,778	67,209
Michell.....	69,660.46	76.8	48,837	100	48,937	55,829	100	55,929
Millen.....	44,136.04	76.8	32,573	40	32,613	32,218	40	32,258
Totals for county.....	355,152.48	.....	\$835,438	\$262,576	\$1,098,014	\$844,768	\$262,744	\$1,107,512

\*The figures in this column are not a part of the official report of the county board of supervisors to the auditor general. This explanation applies to all counties.

## OFFICE OF THE BOARD OF SUPERVISORS OF ALCONA COUNTY,

HARRISVILLE, MICH., June 27, 1901.

We hereby certify that the foregoing is a true statement of the number of acres of land in each township and ward in the county of Alcona, and of the value of the real estate and of the personal property in each township and ward in said county as assessed in the year 1901, and of the aggregate valuation of the real estate and personal property in each township and ward in said county as equalized by the board of supervisors of said county on the 27th day of June, 1901, at a meeting of said board held in pursuance of the provisions of section 134 of the Compiled Laws. We further certify that said statement does not embrace any property paying specific taxes.

ALEX. McNEIL, Chairman of Board of Supervisors.  
GEO. RUTSON, Clerk of Board of Supervisors.

Dated at Harrisville this 27th day of June, 1901.



## Page 289, EXHIBIT F.

## Alcona County.

Township or ward.	Tax commission percentages.
Alcona .....	72.8.
Curtis .....	83.3.
Caledonia .....	49.0.
Gustin .....	87.5.
Greenbush .....	86.0.
Harrisville .....	72.0.
Haynes .....	77.9.
Hawes .....	87.0.
Mikado .....	97.1.
Mitchell .....	76.8.
Millen .....	76.8.

## Alger County.

Au Train .....	75.0.
Burt .....	86.0.
Limestone .....	75.0.
Mathias .....	70.0.
Munising .....	90.0.
Onota .....	90.0.
Rock River .....	75.0.

## Allegan County.

Allegan .....	76.8.
Casco .....	79.1.
Cheshire .....	78.2.
Clyde .....	72.0.
Dorr .....	81.9.
Fillmore .....	79.4.
Ganges .....	79.4.
Gun Plains .....	90.3.
Heath .....	79.4.
Hopkins .....	80.8.
Lake Town .....	66.3.
Lee .....	70.0.
Leighton .....	78.8.
Maulius .....	86.7.
Martin .....	82.7.
Monterey .....	86.1.
Otsego .....	79.4.
Overisel .....	93.6.
Salem .....	88.8.
Saugatuck .....	66.3.
Trowbridge .....	91.4.
Valley .....	88.2.
Watson .....	81.8.
Wayland .....	84.2.

## Alpena County.

Township or ward.	Tax commission percentages.
Alpena .....	55.3.
Green .....	79.8.
Long Rapids.....	76.
Maple Ridge.....	93.5.
Ossineke.....	87.1.
Sanborn .....	83.0.
Wilson .....	82.4.
Alpena City.....	96.0.

455

## Antrim County.

Banks .....	93.3.
Central Lake .....	87.4.
Chestonia .....	54.9.
Custer.....	73.8.
Echo.....	69.8.
Elk Rapids.....	81.7.
Forest Home .....	84.9.
Helena.....	64.6.
Jordan .....	80.6.
Kearney .....	68.1.
Mancelona.....	99.3.
Milton.....	89.0.
Star .....	52.2.
Torch Lake.....	83.0.
Warner.....	70.3.

## Arenac County.

Adams.....	96.6.
Arenac.....	88.8.
Au Gres .....	64.5.
Clayton .....	83.8.
Deep River.....	93.3.
Lincoln.....	92.8.
Mason.....	85.4.
Moffatt .....	66.7.
Standish .....	89.1.
Turner .....	95.9.
Whitney .....	67.2.

## Baraga County.

Arvon .....	52.6.
Baraga .....	50.1.
Covington.....	57.2.
L'Anse .....	43.0.
Spur .....	48.2.

Barry County.

Township or ward.	Tax commission percentages.
Assyria.....	70.6.
Baltimore.....	64.3.
Barry .....	83.6.
Carlton .....	67.5.
Castleton.....	77.4.
Hastings.....	73.0.
Hope .....	60.8.
Irving.....	65.5.
Johnstown .....	79.4.
Maple Grove.....	69.6.
Orangeville .....	61.9.
Prairieville.....	70.0.
Rutland.....	66.0.
Thornapple.....	73.9.
Woodland.....	71.1.
Yankee Springs.....	87.5.
Hastings City.....	72.1.
1st & 4th wards.	
2nd & 3rd wards.	

Bay County.

Bangor .....	84.8.
Beaver .....	82.9.
Frankenlust.....	71.9.
Fraser.....	74.9.
Garfield .....	70.0.
Gibson .....	85.8.
Hampton .....	91.4.
Kawkawlin .....	84.2.
Merritt.....	72.6.
Monitor.....	82.6.
Mount Forest.....	68.1.
Pinconning .....	57.9.
Portsmouth .....	81.5.
Williams .....	76.7.
Bay City.....	91.9.
West Bay City.....	91.3.

Benzie County.

Almira.....	82.9.
Benzonia .....	92.5.
Blaine.....	64.0.
Colfax.....	78.8.
Crystal Lake .....	89.3.
Gilmore .....	76.6.
Homestead.....	82.7.

Township or ward.	Tax commission percentages.
Inland .....	62.4.
Joyfield .....	78.5.
Lake .....	91.7.
Platte .....	78.0.
Weldon.....	65.9.
<b>Berrien County.</b>	
Bainbridge.....	73.4.
Benton .....	66.4.
Benton Harbor.....	72.6.
1st ward,	
2nd "	
3rd "	
4th "	
Berrien.....	70.8.
Bertrand .....	65.0.
Buchanan .....	56.4.
Chickaming.....	44.8.
Galien.....	67.9.
Hager.....	71.8.
Lake .....	49.5.
Lincoln.....	35.1.
New Buffalo.....	59.1.
Niles.....	76.9.
Niles City.....	68.4.
1st ward,	
2nd "	
3rd "	
4th "	
Orinoco.....	66.3.
Pipestone .....	44.9.
Royalton .....	46.0.
Sodus .....	59.2.
St. Joseph.....	62.9.
St. Joseph City.....	67.1.
1st ward,	
2nd "	
3rd "	
4th "	
457 Three Oaks.....	72.1.
Weesaw.....	77.2.
Watervliet.....	*54.4.

\* This does not include resort property on Paw Paw lake, assessed at \$19050.00, the actual value of which is \$135,000.00.

## Branch County.

Township or ward.	Tax commission percentages.
Algansee.....	72.5.
Batavia.....	66.4.
Bethel.....	71.9.
Bronson.....	73.0.
Butler.....	75.7.
California.....	58.2.
Coldwater.....	79.1.
Coldwater City.....	75.6.
1st ward,	
2nd   "	
3rd   "	
4th   "	
Girard.....	74.4.
Gilead.....	77.8.
Kinderhook.....	68.6.
Matteson.....	71.3.
Noble.....	74.5.
Ovid.....	72.6.
Quincy.....	77.1.
Sherwood.....	75.3.
Union.....	72.8.

## Calhoun County.

Athens.....	75.1.
Albion.....	72.4.
Albion City.....	54.7.
1st ward,	
2nd   "	
3rd   "	
4th   "	
Burlington.....	69.4.
Battle Creek.....	84.1.
Battle Creek City.....	70.2.
Bedford.....	95.4.
Clarence.....	64.2.
Clarendon.....	74.9.
Convis.....	86.1.
Eckford.....	75.5.
Emmet.....	76.9.
Fredonia.....	73.2.
Homer.....	59.0.
Lee.....	59.2.
Le Roy.....	64.9.
Marengo.....	88.0.
Marshall.....	84.6.

Township or ward.	Tax commission percentages.
Marshall City.....	70.1.
1st ward.....	
2nd ".....	
3rd ".....	
4th ".....	
458	
Newton.....	72.6.
Penfield.....	86.0.
Sheridan.....	76.3.
Tekonsha.....	70.9.
Cass County.	
Marcellus.....	66.6.
Volinia.....	72.9.
Wayne.....	79.3.
Silver Creek.....	80.1.
Pokagon.....	70.6.
La Grange.....	77.3.
Penn.....	61.7.
Newburg.....	71.6.
Porter.....	85.2.
Calvin.....	77.2.
Jefferson.....	81.6.
Howard.....	67.0.
Milton.....	71.6.
Ontwa.....	74.4.
Mason.....	80.8.
Dowagiac, city.....	48.9.
Charlevoix County.	
Bay.....	74.9.
Boyne Valley.....	80.7.
Chandler.....	57.0.
Charlevoix.....	79.8.
Eveline.....	91.0.
Evangeline.....	78.3.
Hayes.....	69.1.
Hudson.....	78.0.
Marion.....	30.3.
Melrose.....	76.0.
Norwood.....	92.5.
Peaine.....	77.8.
St. James.....	78.6.
South Arn.....	75.6.
Wilson.....	84.0.

## Cheboygan County.

Township or ward.	Tax commission percentages.
Cheboygan City.....	78.7.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
Beaugrand .....	65.2.
Benton.....	70.0.
Burt .....	41.5.
Ellis.....	65.0.
Forest .....	77.7.
Grant .....	66.6.
Hebron.....	79.0.
Inverness .....	77.7.
Mackinaw .....	77.2.
Mentor .....	81.3.
Munroe .....	67.1.
Nunda.....	53.3.
Tuscarora .....	71.7.
Waverly.....	75.3.
Wilmot .....	83.3.

## Chippewa County.

Bruce.....	65.0.
Dafer.....	65.0.
De Tour.....	80.0.
Drummond .....	50.0.
Kinross.....	90.0.
Pickford .....	65.0.
Rabor. ....	60.0.
Rudyard.....	80.0.
Sault Ste. Marie.....	100.0.
Sugar Island.....	50.0.
Superior .....	75.0.
Trout Lake.....	60.0.
White Fish.....	40.0.
Sault Ste. Marie City.....	100.0.

## Clare County.

Arthur.....	56.0.
Franklin .....	46.3.
Frost.....	69.5.
Garfield.....	55.2.
Grant .....	66.8.
Greenwood.....	62.5.
Hamilton.....	31.2.



Township or ward.	Tax commission percentages.
Hatton.....	53.1.
Hayes .....	46.4.
Reading .....	61.4.
Sheridan.....	45.3.
Summerfield.....	47.8.
Surrey.....	79.4.
Winterfield.....	55.7.
Clare City.....	59.4.
1st ward,	
2nd "	
3rd "	
Harrison City.....	71.2.
1st ward,	
2nd "	
3rd "	
Clinton County.	
Bath....	82.5.
Bengal .....	69.5.
Bingham.....	94.0.
Dallas.....	74.8.
De Witt.....	72.6.
Duplain .....	83.0.
Eagle.....	78.8.
Essex .....	75.7.
Greenbush.....	75.1.
Lebanon.....	68.7.
Olive.....	76.8.
Ovid .....	79.0.
Riley.....	82.3.
Victor .....	76.1.
Watertown.....	78.0.
Westphalia.....	78.6.
Crawford County.	
Beaver Creek.....	50.0.
Frederic .....	47.7.
Grayling.....	57.6.
Maple Forest.....	87.4.
South Branch .....	59.3.
Delta County.	
Baldwin .....	49.4.
Bark River.....	32.9.
Bay de Noc .....	65.2.
Escanaba.....	55.6.
Fairbanks .....	83.8.
Ford River.....	39.7.

Township or ward.	Tax commission percentages.
Garden .....	101.6.
Maple Ridge .....	34.6.
Masonville .....	60.4.
Nahma .....	49.2.
Sac Bay .....	69.6.
Wells .....	66.6.
Escanaba City .....	42.9.
Gladstone City .....	73.9.

## Dickinson County.

Breen .....	*29.8.
Breitung .....	*37.5.
Felch .....	33.5.
Norway .....	59.5.
Sagola .....	36.2.
Waucadah .....	62.4.
Iron Mountain City .....	70.1.
City of Norway .....	77.2.
1st ward,	
2nd "	
3rd "	

\* These percentages do not include assessed valuation of several mines. Assessors should inquire of tax commission.

## Eaton County.

Bellevue .....	90.9.
Benton .....	97.3.
Brookfield .....	79.8.
Carmel .....	91.5.
Chester .....	87.8.
Charlotte .....	78.8.
Delta .....	88.0.
Eaton .....	91.3.
Eaton Rapids .....	89.1.
Eaton Rapids City .....	81.0.
Grand Ledge City .....	78.5.
Hamlin .....	84.0.
Kalomel .....	87.4.
Oneida ... ..	91.4.
Roxand .....	82.0.
Sunfield .....	93.0.
Vermontville .....	86.6.
Walton .....	89.7.
Windsor .....	91.0.

461

## Emmet County.

Township or ward.	Tax commission percentages.
Bear Creek.....	80.8.
Bliss.....	64.0.
Carp Lake.....	68.6.
Center.....	65.8.
Cross Village.....	84.1.
Egleston.....	86.6.
Friendship.....	69.8.
Littlefield.....	72.4.
Little Traverse.....	55.0.
Maple River.....	82.9.
Pleasantview.....	69.7.
Readmond.....	71.6.
Resort.....	87.6.
Springvale.....	72.7.
West Traverse.....	59.3.
City of Petoskey.....	90.0.

## Genesee County.

Argentine.....	83.2.
Atlas.....	94.2.
Burton.....	79.5.
Clayton.....	84.4.
Davison.....	88.1.
Fenton.....	80.3.
Flint.....	82.6.
Flushing.....	87.8.
Forest.....	70.6.
Gaines.....	76.6.
Genesee.....	82.1.
Grand Blanc.....	82.1.
Montrose.....	79.7.
Mount Morris.....	83.3.
Mundy.....	74.7.
Richfield.....	81.9.
Thetford.....	80.2.
Vienna.....	78.4.
Flint City.....	77.4.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
6th "	

## Gladwin County.

Township or ward.	Tax commission percentages.
Beaverton.....	71.1.
Bentley .....	79.2.
Billings.....	72.7.
Bourret.....	82.2.
Buckeye .....	75.6.
Butman .....	85.9.
Clement .....	88.1.
Gladwin .....	83.0.
Grout.....	80.7.
Sage .....	77.3.
Sherman.....	86.3.
Tobacco .....	52.0.
City of Gladwin.....	89.4.

462

## Gogebic County.

City of Ironwood.....	73.0.
City of Bessemer.....	66.8.
Ironwood.....	56.3.
Bessemer.....	50.0.
Wakefield.....	37.9.
Marenisco.....	87.5.
Watersmeet.....	56.0.

## Grand Traverse County.

Acme.....	59.8.
Blair.....	81.9.
East Bay .....	70.7.
Fife Lake.....	62.9.
Garfield .....	67.9.
Grant.....	65.7.
Green Lake.....	87.4.
Long Lake.....	70.9.
Mayfield.....	59.2.
Paradise.....	64.6.
Peninsula.....	57.0.
Union .....	69.2.
Whitewater.....	61.9.
Traverse City.....	78.9.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	

## Gratiot County.

Township or ward.	Tax commission percentages.
Arcada.....	83.2.
Bethany.....	60.7.
Elba.....	56.6.
Emerson.....	61.8.
Fulton.....	68.6.
Hamilton.....	83.3.
Ithaca.....	73.2.
Lafayette.....	76.6.
Newark.....	77.1.
New Haven .....	69.7.
North Shade.....	69.9.
North Star .....	62.8.
Pine River.....	71.4.
Seville.....	71.2.
Sumner.....	71.9.
St. Louis.....	74.9.
Washington.....	67.2.
Wheeler.....	60.8.

## Hillsdale County.

Adams.....	77.3.
Allen.....	80.9.
Amboy.....	69.1.
Cambria.....	76.6.
Camden.....	72.2.
Fayette.....	89.9.
Hillsdale.....	84.1.
Jefferson.....	73.7.
Litchfield.....	81.8.
Moscow.....	81.5.
Pittsford.....	77.2.
463 Ransom.....	67.6.
Reading.....	81.0.
Scipio.....	83.2.
Somerset.....	81.6.
Wheatland.....	82.7.
Woodbridge.....	73.8.
Wright.....	62.1.
City of Hillsdale.....	79.8.

## Houghton County.

Township or ward.	Tax commission percentages.
Adams .....	*70.8.
Calumet.....	49.4.
Chassell.....	51.9.
Duncan.....	54.3.
Elm River.....	47.2.
Franklin.....	64.2.
Hancock.....	39.9.
Laird .....	51.9.
Osceola .....	43.0.
Portage.....	48.7.
Quincy .....	86.1.
Schoolcraft.....	55.5.
Torch Lake .....	68.1.

\* These percentages do not include assessed valuations of several mines. Assessors should inquire of tax commission.

## Huron County.

Bingham.....	79.3.
Bloomfield .....	84.3.
Brookfield .....	63.1.
Caseville.....	83.4.
Chandler .....	68.1.
Colfax.....	68.1.
Dwight.....	84.2.
Fair Haven.....	80.0.
Gore.....	82.2.
Grant.....	67.7.
Hume.....	77.0.
Huron.....	98.4.
Lake.....	91.7.
Lincoln.....	89.9.
Meade.....	82.6.
Oliver .....	75.0.
Paris.....	77.1.
Port Austin.....	76.8.
Rubicon.....	93.2.
Sand Beach .....	81.2.
Sebewaing.....	88.2.
Sheridan.....	85.2.
Sherman.....	77.2.
Sigel .....	92.5.
Verona .....	84.1.
Winsor .....	81.7.

## Ingham County.

Township or ward.	Tax commission percentages.
Alaiedon .....	79.8.
Aurelius.....	82.6.
Bunkerhill.....	80.9.
Delhi .....	83.9.
Ingham .....	85.4.
Lansing .....	81.0.
Lansing City.....	50.8.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
6th "	
Leslie .....	78.9.
Leroy .....	84.6.
Locke .....	77.3.
Mason City.....	83.1.
1st ward,	
2nd "	
Meridian.....	83.9.
Onondaga.....	79.0.
Stockbridge .....	71.6.
Vevay.....	79.6.
Wheatfield.....	79.5.
White Oak.....	73.2.
Williamston .....	80.2.

## Ionia County.

Belding City.....	73.2.
1st ward,	
2nd "	
3rd "	
Berlin.....	70.5.
Boston .....	72.0.
Campbell .....	70.6.
Danby.....	75.8.
Easton.....	78.9.
Ionia.....	88.9.
Ionia City .....	80.1
1st & 2nd wards,	
3rd & 4th wards.	
Keene.....	79.5.
Lyons .....	72.5.
North Plains.....	77.1.
Odessa .....	85.3.
Orange .....	70.8.



Township or ward.	Tax commission percentages.
Orleans.....	90.4.
Otisco .....	78.7.
Portland.....	75.4.
Ronald .....	84.4.
Sebewa .....	61.1.

## Iosco County.

Alabaster .....	84.5.
Au Sable .....	100.0.
Baldwin .....	84.7.
Burleigh.....	67.8.
Grant .....	80.2.
Oseonda .....	87.5.
Plainfield .....	85.9.
Reno.....	84.4.
Sherman.....	92.8.
Tawas .....	83.6.
Wilber .....	73.9.
Au Sable City .....	94.4.
1st ward,	
2nd ward,	
3rd ward,	
Tawas City.....	83.4.
1st ward,	
2nd ward,	
3rd ward,	
East Tawas City (1, 2, 3 wards) .....	83.4.

## Iron County.

Atkinson .....	*30.9.
Bates .....	45.7.
Crystal Falls.....	60.6.
Hematite ..	75.9.
Iron River .....	53.5.
Mastodon.....	70.8.
Mansfield .....	35.3.
Stambaugh.....	56.9.
City of Crystal Falls.....	73.6.

\*These percentages do not include the assessed valuation of several mines. Assessors should inquire of the tax commission.

## Isabella County.

Coe .....	63.6.
Lincoln .....	77.1.
Fremont.....	61.4.
Rolland.....	51.1.
Broomfield .....	68.6.

Township or ward.	Tax commission percentages.
Deerfield.....	70.3.
Union.....	77.2.
Chippewa.....	78.8.
Denver.....	59.5.
Isabella.....	55.1.
Nottawa.....	71.8.
Sherman.....	98.2.
Coldwater.....	66.4.
Gilmore.....	89.3.
Vernon.....	66.0.
Wise.....	62.6.
City of Mount Pleasant.....	82.4.

## Jackson County.

	Blackman.....	64.5.
	Columbia.....	86.0.
	Concord.....	85.0.
	Grass Lake.....	88.4.
	Hanover.....	89.9.
	Henrietta.....	69.4.
	Leoni.....	77.4.
	Liberty.....	81.8.
	Napoleon.....	86.3.
	Norvell.....	93.2.
	Parma.....	90.2.
466	Pulaski.....	77.0.
	Rives.....	73.0.
	Sandstone.....	93.2.
	Spring Arbor.....	86.7.
	Springport.....	87.5.
	Summit.....	84.5.
	Tompkins.....	86.9.
	Waterloo.....	44.1.
	Jackson City.....	57.8.
	1st ward.	
	2nd "	
	3rd "	
	4th "	
	5th "	
	6th "	
	7th "	
	8th "	

## Kalamazoo County.

Township or ward.	Tax commission percentages.
Alamo.....	72.3.
Brady.....	62.4.
Charleston... ..	72.7.
Climax.....	72.0.
Comstock .....	70.9.
Cooper .....	77.1.
Kalamazoo .....	60.8.
Kalamazoo City.....	58.6.
Oshtemo.....	72.9.
Pavilion .....	65.0.
Portage.....	73.7.
Prairie Ronde.....	72.4.
Richland .....	69.9.
Ross.....	79.0.
Schoolcraft .....	67.9.
Texas .....	63.8.
Wakeshma.....	66.3.

## Kalkaska County.

Boardman.....	83.9.
Cold Springs.....	79.9.
Clearwater.....	73.6.
Excelsior.....	70.0.
Garfield .....	70.8.
Kalkaska.....	78.5.
Oliver .....	75.8.
Orange.....	70.2.
Rapid River.....	75.8.
Springfield.....	85.9.
Wilson.....	85.7.

## Kent County.

Ada.....	84.6.
Algoma .....	67.8.
Alpine.....	71.0.
Bowne.....	83.4.
Byron .....	72.1.
Caledonia .....	76.6.
Cannon.....	71.8.
Cascade.....	76.4.
Courtland.....	64.7.
Gaines.....	75.8.
Grand Rapids .....	58.6.
Grattan .....	74.4.
Lowell .....	63.3.
Nelson .....	57.2.
Oakfield .....	66.8.

Township or ward.	Tax commission percentages.
Paris .....	59.7.
Plainfield .....	73.4.
Solon.....	61.1.
Sparta.....	76.0.
Spencer.....	62.3.
Tyrone .....	62.1.
Vergennes .....	71.7.
Walker .....	71.7.
Wyoming.....	76.5.
Grand Rapids .....	66.6.
1st ward,	
2nd    "	
3rd    "	
4th    "	
5th    "	
6th    "	
7th    "	
8th    "	
9th    "	
10th   "	
11th   "	
12th   "	

## Keweenaw County.

Allouez .....	*
Eagle Harbor .....	
Grant .....	
Houghton .....	
Sherman .....	

\* No figures furnished by the tax commission.

## Lake County.

Chase .....	59.6.
Cherry Valley.....	48.5.
Dover.....	67.8.
Ellsworth.....	37.2.
Eden.....	100.0.
Elk .....	75.7.
Lake .....	71.2.
Newkirk.....	61.1.
Pinora .....	61.6.
Pleasant Plains.....	97.0.
Webber .....	85.0.

## Lapeer County.

Township or ward.	Tax commission percentages.
Almont .....	81.7.
Arcadia .....	86.2.
Attica .....	75.9.
Burlington.....	89.5.
Burnside .....	83.1.
Deerfield .....	69.6.
Dryden.....	90.3.
Elba .....	75.0.
Goodland .....	82.7.
Hadley .....	89.9.
Imlay .....	78.2.
Lapeer .....	86.5.
Marathon.....	88.5.
Mayfield.....	65.7.
Metamora .....	78.9.
North Branch .....	78.8.
Oregon.....	71.0.
Rich.....	84.3.
Lapeer City.....	80.6.
1st ward,	
2nd "	
3rd "	
4th "	

## Leelanau County.\*

Bingham.....	74.8.
Centerville.....	64.1.
Cleveland.....	67.8.
Empire .....	64.2.
Elmwood.....	68.8.
Glen Arbor. ....	78.2.
Kasson.....	67.6.
Leelanau .....	67.3.
Leland.....	72.1.
Sutton's Bay.....	70.4.
Solon.....	83.1.

\* See note above Alcona county.

## Lenawee County.

Adrian City.....	56.5.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
Adrian.....	69.6.

Township or ward.	Tax commission percentages.
Blissfield .....	64.2.
Cambridge .....	82.5.
Clinton .....	74.9.
Deerfield .....	72.4.
Dover .....	84.8.
Fairfield .....	72.5.
Franklin .....	86.3.
Hudson .....	89.4.
Hudson City .....	76.6.
Macon .....	73.3.
Madison .....	86.8.
Medina .....	86.3.
Ogden .....	68.3.
Palmyra .....	73.4.
Raisin .....	82.2.
Ridgeway .....	70.8.
Riga .....	60.6.
Rolland .....	75.4.
Rome .....	85.7.
Seneca .....	79.2.
Tecumseh .....	74.3.
Woodstock .....	69.7.

## Livingston County.

Brighton .....	81.8.
Cohoctah .....	80.9.
Conway .....	81.2.
Deerfield .....	88.6.
Genoa .....	80.4.
Greek Oak .....	92.6.
Hamburg .....	91.3.
Handy .....	78.3.
Hartland .....	90.1.
Howell .....	75.9.
Iosco .....	85.9.
Marion .....	82.1.
Osceola .....	86.9.
Putnam .....	81.3.
Tyrone .....	79.9.
Unadilla .....	80.9.
In corporate limits, Village of Howell, Howell township.	

## Luce County.

Columbus .....	65.0.
Lakefield .....	75.0.
McMillan .....	75.0.
Pentland .....	60.0.

Township or ward.	Tax commission percentages.
----------------------	--------------------------------

**Mackinac County.**

Brevort.....	94.1.
Bois Blanc .....	50.0.
Cedar .....	94.4.
Garfield .....	80.0.
Hendricks .....	30.0.
Marquette.....	50.0.
Moran.....	80.0.
Newton.....	70.0.
Portage .....	66.7.
Sherwood .....	84.0.
St. Ignace.....	63.0.
Mackinac Island City.....	90.0.
St. Ignace City.....	101.1.

**Macomb County.\***

Armada.....	71.6.
Bruce.....	72.9.
Clinton .....	42.8.
Chesterfield .....	60.3.
Erin.....	61.6.
Harrison.....	50.0.
Lenox .....	62.2.
Macomb.....	69.3.
Ray .....	71.8.
Richmond .....	62.1.
Shelby .....	80.5.
Sterling .....	69.3.
Warren.....	66.5.
Washington.....	70.8.
City of Mount Clemens.....	52.4.
1st ward,	
2nd "	
3rd "	

\* See note above Alcona county.

**Manistee County.**

Arcadia .....	89.5.
Bear Lake.....	59.1.
Brown.....	65.4.
Cleon.....	80.9.
Filer.....	65.6.
Manistee.....	95.1.
Maple Grove.....	73.7.
Marilla .....	69.9.
Onkama.....	50.5.
Pleasanton .....	75.8.



Township or ward.	Tax commission percentages.
Springdale .....	45.8.
Stronach .....	99.9.
City of Manistee .....	67.7.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
6th "	
7th "	

## Marquette County.\*

Marquette City .....	†
Ishpeming City .....	
Negaunee City .....	
Champion .....	
Chocolay .....	
Ely .....	
Forsyth .....	
Humboldt .....	
Ishpeming .....	
Michigamme .....	
Marquette .....	
Negaunee .....	
Republic .....	
Richmond .....	
Sands .....	
Skandia .....	
Turin .....	
Tilden .....	
West Branch .....	

\*See note above Alcona county.

†No percentages furnished by tax commission.

## Mason County.

Amber .....	92.2.
Branch .....	75.4.
Custer .....	73.1.
Eden .....	84.3.
Freesoil .....	84.6.
Grant .....	93.6.
Hamlin .....	78.9.
Pere Marquette .....	77.9.
Riverton .....	73.4.
Sheridan .....	63.6.
Sherman .....	74.6.
Summit .....	85.7.
Victory .....	86.7.
City of Ludington .....	67.4.

## Mecosta County.

Township or ward.	Tax commission percentages.
Ætna.....	52.6.
Austin.....	59.8.
Big Rapids.....	70.3.
Chippewa.....	59.5.
Colfax.....	55.6.
Deerfield.....	53.3.
Fork.....	60.7.
Grant.....	62.7.
Green.....	68.1.
Hinton.....	66.6.
Martiny.....	66.2.
Mecosta.....	52.0.
Millbrook.....	55.1.
Morton.....	62.3.
Sheridan.....	62.6.
Wheatland.....	53.5.
City of Big Rapids.....	80.8.

## Menominee County.

Cedarville.....	61.8.
Holmes.....	50.9.
Ingallston.....	57.8.
Menominee.....	66.0.
Millen.....	77.6.
Meyer.....	79.6.
Nadeau.....	47.6.
Stephenson.....	56.5.
Spalding.....	47.8.
Menominee.....	55.2.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
6th "	
7th "	

## Midland County.

Edenville.....	59.6.
Geneva.....	62.3.
Greendale.....	51.2.
Homer.....	59.8.
Hope.....	61.3.
Ingersoll.....	65.3.
Jasper.....	53.5.
Jerome.....	49.6.
Larkin.....	58.4.
Lee.....	61.5.

Township or ward.	Tax commission percentages.
Lincoln.....	53.2.
Midland .....	61.6.
Mt. Haley.....	52.1.
Mills .....	39.1.
Porter .....	65.2.
Warren.....	85.2.
City of Midland.....	62.6.
1st ward,	
2nd "	
3rd "	
4th "	

## \* Missaukee County.

Etna.....	72.0.
Bloomfield .....	60.7.
Butterfield .....	67.1.
Caldwell .....	66.4.
Clam Union.....	72.8.
Forest .....	70.2.
Lake .....	59.3.
Norwich .....	69.5.
Pioneer .....	69.1.
Reeder .....	58.3.
Richland .....	75.3.
Riverside .....	77.8.
West Branch.....	53.2.

\* See note above Alcona county.

## Monroe County.\*

Ash .....	88.2.
Berlin .....	81.3.
Bedford.....	71.3.
Dundee.....	73.1.
Erie.....	86.1.
Exeter.....	75.7.
Frenchtown .....	83.1.
Ida .....	72.9.
La Salle.....	74.9.
London.....	85.4.
Milan.....	83.9.
Monroetown .....	74.7.
Raisinville .....	91.5.
Summerfield .....	63.3.
Whiteford.....	66.8.
Monroe City.....	84.1.
1st ward,	
2nd "	
3rd "	
4th "	

\* See note above Alcona county.

## Montcalm County.

Township or ward.	Tax commission percentages.
Belvidere .....	37.9.
Bloomer.....	70.3.
Bushnell.....	71.2.
Cato.....	47.7.
Crystal.....	62.5.
Day.....	71.9.
Douglass .....	49.2.
Eureka.....	65.6.
Evergreen .....	82.1.
Fairplain.....	56.2.
Ferris .....	52.6.
Home.....	59.4.
Maple Valley.....	44.9.
Montcalm.....	65.1.
Pierson .....	53.4.
Pine .....	54.1.
Reynolds .....	37.4.
Richland .....	58.1.
Sidney .....	44.0.
Winfield.....	52.3.
Greenville .....	68.1.
1st ward,	
2nd "	
3rd "	
Stanton .....	80.3.
1st ward,	
2nd "	
3rd "	

## Montmorency County.

Albert.....	44.6.
Briley .....	46.4.
Hillman.....	79.5.
Montmorency .....	56.0.
Rust .....	88.7.
Vienna .....	48.6.

## Muskegon County.

Blue Lake .....	90.2.
Casnovia.....	88.5.
Cedar Creek.....	79.5.
Dalton .....	64.4.
Egelston .....	81.6.
Fruitport .....	42.1.
Fruitland .....	48.8.
Holton .....	73.3.
Laketon .....	57.2.

Township or ward.	Tax commission percentages.
Montague.....	63.5.
Moorland .....	51.6.
Muskegon .....	46.1.
Norton.....	*49.0.
Ravenna.....	63.3.
Sullivan.....	57.4.
Whitehall .....	70.4.
White River.....	47.5.
City of Muskegon.....	83.9.
City of North Muskegon.....	70.6.

\* See report of tax commission.

#### Newaygo County.

Ashaland.....	95.9.
Barton .....	77.2.
Beaver.....	64.6.
Big Prairie.....	66.0.
Bridgeton.....	92.0.
Brooks .....	81.9.
Croton.....	64.6.
Dayton .....	68.7.
Denver .....	77.9.
Eusley .....	62.0.
Everett .....	69.7.
Garfield .....	69.5.
Goodwell .....	60.4.
Grant .....	62.7.
Home .....	73.1.
Lincoln.....	75.4.
Monroe.....	79.9.
Norwich .....	78.6.
Sheridan.....	62.6.
Sherman.....	75.2.
Troy .....	79.8.
Wilcox .....	79.1.

#### Oakland County.

Addison .....	74.1.
Avon.....	76.7.
Bloomfield.....	74.1.
Brandon.....	76.2.
Commerce .....	84.7.
Farmington .....	84.4.
Groveland .....	82.0.
Highland.....	88.3.
Holly .....	78.0.
Independence .....	81.7.

Township or ward.	Tax commission percentages.
Lyon.....	88.6.
Milford...	83.1.
Novi.....	88.5.
Oakland.....	86.6.
Orion.....	71.5.
Oxford.....	70.2.
Pontiac.....	74.1.
Pontiac City.....	73.9.
Rose.....	78.6.
Royal Oak.....	67.5.
Southfield.....	82.0.
Springfield.....	89.7.
Troy.....	75.2.
Waterford.....	85.1.
West Bloomfield.....	55.1.
White Lake.....	75.5.

## Oceana County.

Pentwater.....	79.5.
Weare.....	96.7.
Crystal.....	87.3.
Colfax.....	69.2.
Leavitt.....	94.3.
Elbridge.....	98.0.
Hart.....	83.1.
Golden.....	86.3.
Benona.....	69.7.
Shelby.....	74.4.
Ferry.....	69.5.
Newfield.....	73.2.
Greenwood.....	80.2.
Otto.....	79.8.
Grant.....	60.1.
Claybanks.....	72.9.

## Ogemaw County.

Churchill.....	68.5.
Cumming.....	63.4.
Edwards.....	79.4.
Foster.....	80.7.
Goodar.....	81.3.
Hill.....	73.7.
Horton.....	79.8.
Klacking.....	74.8.
Logan.....	83.5.
Mills.....	80.7.
Richland.....	89.0.
Rose.....	85.2.
West Branch.....	87.5.

## Ontonagon County.

Township or ward.	Tax commission percentages.
	*
Bohemia.....	40.9.
Carp Lake.....	30.0.
Greenland.....	48.6.
Haight.....	41.5.
Interior.....	38.1.
Matchwood.....	44.4.
McMillan.....	34.2.
Ontonagon.....	42.4.
Rockland.....	56.2.

\* These percentages do not include the assessed valuation of several mines. Assessors should inquire of tax commission.

475

## Osceola County.

Burdill.....	75.4.
Cedar.....	79.1.
Evart.....	51.3.
Hartwick.....	56.6.
Highland.....	51.6.
Hersey.....	66.3.
Le Roy.....	64.4.
Lincoln.....	71.5.
Marion.....	53.1.
Middle Branch.....	68.1.
Orient.....	57.4.
Osceola.....	69.4.
Richmond.....	69.6.
Rose Lake.....	56.1.
Sherman.....	62.5.
Sylvan.....	68.0.

## Oscoda County.

Big Creek.....	83.7.
Comins.....	49.9.
Elmer.....	77.2.
Mentor.....	68.5.

## Otsego County.

Bagley.....	61.0.
Charlton.....	69.9.
Chester.....	78.9.
Corwith.....	70.6.
Dover.....	75.0.
Elmira.....	80.5.
Hayes.....	42.3.
Livingston.....	68.5.
Otsego Lake.....	42.7.



## Ottawa County.

Township or ward.	Tax commission percentages.
Allendale.....	71.0.
Blendon .....	93.7.
Chester .....	72.3.
Crockery.....	70.4.
Georgetown .....	87.4.
Grand Haven.....	73.0.
Holland .....	47.2.
Jamestown.....	82.2.
Olive.....	92.4.
Polkton .....	77.3.
Robinson .....	76.9.
Spring Lake.....	39.0.
Talmadge.....	78.4.
Wright.....	80.2.
Zeeland .....	88.7.
Grand Haven City.....	51.3.
Holland City.....	63.3.

## Presque Isle County.

Allis .....	102.5.
Bearinger.....	63.2.
Belknap .....	94.7.
Bismarck .....	63.2.
Case.....	80.6.
Krakow .....	81.2.
Metz .....	87.5.
Moltke .....	99.3.
Ocqueoc .....	96.8.
Posen .....	84.1.
Presque Isle.....	63.2.
Rogers .....	97.5.

## Roscommon County.

Denton .....	*
Gerrish.....	
Higgins.....	
Markey .....	
Nester .....	
Rishfield.....	
Roscommon.....	

\* No percentages prepared by tax commission.

## Saginaw County.

Albee.....	65.3.
Birch Run.....	54.6.
Blumfield.....	54.2.

Township or ward.	Tax commission percentages.
Brady .....	65.3.
Brant.....	70.5.
Bridgeport.....	63.8.
Buena Vista.....	56.0.
Carrollton.....	80.5.
Chapin.....	55.6.
Chesaning.....	72.6.
Frankenmuth.....	68.2.
Freemont .....	59.8.
James.....	63.3.
Jonesville .....	71.4.
Kochville.....	66.4.
Lakefield.....	73.9.
Maple Grove.....	72.8.
Marion.....	62.1.
Richland.....	49.2.
St. Charles .....	60.2.
Saginaw.....	74.0.
Swan Creek.....	56.6.
Spaulding .....	78.3.
Tittabawassee.....	69.2.
Thomastown.....	56.5.
Taymouth.....	58.7.
Zilwaukie.....	64.7.
City of Saginaw.....	85.6.

## Sanilac County.

Argyle.....	81.1.
Austin.....	83.5.
Bridgehampton.....	78.3.
Buel.....	66.4.
Custer .....	57.6.
Delaware .....	62.1.
Elk .....	70.4.
Elmer.....	84.0.
Evergreen .....	83.7.
Flynn .....	79.2.
Forester .....	87.0.
Freemont .....	83.6.
Greenleaf.....	89.1.
Lamotte .....	89.5.
Lexington.....	70.8.
Maple Valley.....	66.1.
Marion .....	81.9.
Marlette .....	65.0.
Minden.....	81.1.
Moore.....	58.2.

Township or ward.	Tax commission percentages.
Sanilac .....	69.3.
Speaker .....	82.3.
Washington.....	56.0.
Watertown.....	58.9.
Wheatland.....	71.5.
Worth.....	88.1.

## Schoolcraft County.

City of Manistique.....	48.0.
1st ward,	
2nd "	
3rd "	
4th "	
Manistique.....	48.8.
Hiawatha.....	38.7.
Harrison.....	29.9.
Doyle .....	43.1.
Inwood .....	36.2.
Thompson .....	46.9.
Germfask .....	22.8.
Seney .....	31.3.

## Shiawassee County.

Antrim.....	63.4.
Bennington .....	78.3.
Burns .....	71.8.
Caledonia.....	65.2.
Fairfield.....	77.3.
Hazelton .....	94.2.
Middleburg .....	78.2.
New Haven.....	92.5.
Owosso .....	72.3.
Perry .....	60.6.
Rush.....	60.9.
Sciota .....	76.1.
Shiawassee.....	71.4.
Venice .....	79.5.
Vernon.....	64.4.
Woodhull.....	76.5.
Owosso City .....	93.3.
Corunna City.....	87.1.

## St. Clair County.

Township or ward.	Tax commission percentages.
Berlin .....	60.2.
Brockway .....	71.8.
Burchville .....	67.0.
Casco .....	54.3.
Clay .....	38.5.
China .....	62.3.
Cottrellville .....	64.3.
Columbus .....	67.3.
Clyde .....	84.4.
East China .....	80.9.
Emmet .....	72.5.
Fort Gratiot .....	73.1.
Grant .....	71.5.
Greenwood .....	68.9.
Ira .....	42.5.
Kenockee .....	76.2.
Kimball .....	62.6.
Lynn .....	75.5.
Mussey .....	77.5.
Port Huron .....	45.2.
Riley .....	60.5.
St. Clair .....	44.4.
Wales .....	64.0.
478 City of Port Huron .....	50.6.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
6th "	
7th "	
8th "	
9th "	
10th "	
City of St. Clair .....	70.3.
City of Marine City .....	68.9.

## St. Joseph County.

Township or ward.	Tax commission percentages.
Burr Oak .....	60.2.
Colon .....	66.7.
Constantine .....	65.9.
Fabius .....	70.7.
Fawn River .....	58.3.
Florence .....	75.4.
Flowerfield .....	72.5.
Leonidas .....	79.5.
Lockport .....	75.0.
Mendon .....	81.4.
Mottville .....	86.1.
Nottawa .....	73.7.
Park .....	85.3.
Sherman .....	67.8.
Sturgis .....	74.8.
White Pigeon .....	86.5.
City of Sturgis .....	52.0.
City of Three Rivers .....	67.8.

## Tuscola County.

Akron .....	74.9.
Arbela .....	77.7.
Almer .....	87.2.
Columbia .....	75.9.
Dayton .....	80.9.
Denmark .....	87.1.
Elkland .....	76.1.
Ellington .....	82.1.
Elmwood .....	81.3.
Fairgrove .....	79.1.
Freemont .....	75.1.
Gilford .....	81.9.
Indianfields .....	90.2.
Juniata .....	79.6.
Kingston .....	78.5.
Koylton .....	82.5.
Millington .....	86.3.
Novesta .....	86.4.
Tuscola .....	83.4.
Vassar .....	94.4.
Watertown .....	80.9.
Wells .....	60.5.
Wisner .....	70.7.

## Van Buren County.

Township or ward.	Tax commission percentages.
Almena .....	80.9.
Arlington .....	80.4.
Antwerp .....	62.6.
Bangor .....	70.4.
Bloomingsdale .....	75.3.
Covert .....	74.3.
Columbia .....	64.5.
Decatur .....	81.0.
Geneva .....	73.6.
Hamilton .....	84.2.
Hartford .....	75.3.
Keeler .....	73.9.
Lawrence .....	85.7.
Porter .....	75.5.
Pine Grove .....	70.1.
Paw Paw .....	70.7.
South Haven .....	57.9.
Waverly .....	81.2.

## Washtenaw County.\*

Ann Arbor city .....	98.9.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	
6th "	
7th "	
Ann Arbor .....	95.0.
Augusta .....	81.7.
Bridgewater .....	92.6.
Dexter .....	84.2.
Freedom .....	86.4.
Lima .....	82.5.
Lodi .....	88.8.
Lyndon .....	78.9.
Manchester .....	91.6.
Northfield .....	94.9.
Pittsfield .....	92.7.
Salem .....	84.0.
Saline .....	92.9.
Scio .....	91.1.
Sharon .....	99.1.

Township or ward.	Tax commission percentages.
Superior .....	94.1.
Sylvan .....	89.1.
Webster .....	90.3.
York .....	98.7.
Ypsilanti .....	95.1.
Ypsilanti City .....	83.8.
1st ward,	
2nd "	
3rd "	
4th "	
5th "	

\* See note above Alcona county.

### Wayne County.

Brownstown.....	68.3.
Canton .....	75.5.
Dearborn .....	74.7.
Ecorse .....	76.4.
Gratiot .....	60.9.
Greenfield .....	72.5.
Grosse Pointe .....	53.5.
Hamtramck .....	60.5.
Huron.....	68.4.
Livonia.....	71.5.
Monguagon .....	93.2.
Nankin .....	66.2.
Northville .....	71.7.
Plymouth.....	74.8.
Redford .....	70.3.
Romulus.....	62.6.
Springwells .....	53.6.
Sumpter .....	77.3.
Taylor.....	55.7.
Van Buren .....	63.7.
City of Wyandotte.....	77.9.
1st ward,	
2nd "	
3rd "	
City of Detroit.....	101.3.

### Wexford County.

Antioch .....	86.6.
Boon .....	84.6.
Cherry Grove.....	81.7.
Cedar Creek.....	81.2.
Clam Lake.....	61.8.



Township or ward.	Tax commission percentages.
Colfax .....	78.2.
Greenwood.....	74.4.
Hanover.....	60.4.
Haring.....	42.4.
Henderson .....	70.7.
Liberty.....	61.9.
Selma.....	48.7.
Slagle.....	82.7.
Springville.....	82.5.
South Branch.....	62.9.
Wexford.....	108.7.
City of Cadillac .....	86.0.

(Here follows tables marked pp. 481, 482, 483.)



Offered by complainant

TABULATION of the Assessed and Equalized Valuation of the Aggregate Real and Personal Property of the several Counties in Michigan, as made by the Boards of Supervisors at the June Sessions in 1901.

Counties.	Acres assessed.	Valuation as assessed.		Total valuation as assessed.	Valuation as equalized.		Total valuation as equalized.
		Real estate.	Personal property.		Real estate.	Personal property.	
Alcona.....	325,192.48	\$835,438	\$292,576	\$1,098,014	\$844,768	\$292,744	\$1,107,512
Alcona.....	570,642.50	2,165,677	511,725	2,677,402	2,030,677	511,725	2,542,402
Alcona.....	513,401	15,314,954	3,790,221	19,105,175	14,269,779	3,790,221	18,060,000
Alcona.....	313,362.19	3,252,728	1,624,733	4,877,461	2,975,267	1,624,733	4,600,000
Alcona.....	302,646	3,459,068	1,052,438	4,511,506	3,272,965	1,052,438	4,325,403
Alcona.....	223,713	1,512,127	1,810,679	3,322,806	1,507,449	1,810,679	3,318,128
Alcona.....	496,041	2,046,259	306,709	2,352,968	1,498,129	306,709	1,804,838
Alcona.....	391,960	8,765,945	2,131,029	10,896,974	8,757,448	2,131,029	10,918,477
Alcona.....	274,343.16	18,150,800	5,109,508	23,260,308	18,412,000	5,109,508	23,521,508
Alcona.....	182,269.32	2,218,195	4,067,461	6,285,656	2,206,818	4,067,461	6,273,279
Alcona.....	345,896	19,713,100	3,865,460	23,578,560	20,557,762	3,865,460	26,261,823
Alcona.....	315,461	12,096,260	8,306,058	20,402,318	16,261,730	8,306,058	24,567,780
Alcona.....	435,251	21,908,470	2,179,184	24,087,654	22,133,610	2,179,184	26,312,794
Alcona.....	309,135	10,363,830	784,243	11,148,073	10,235,815	784,243	12,415,000
Alcona.....	243,527.22	2,712,198	871,290	3,583,488	2,548,170	871,290	3,419,460
Alcona.....	415,119.35	2,869,150	2,439,496	5,308,646	7,697,132	2,439,496	10,035,627
Alcona.....	846,860.96	6,854,340	3,942,976	10,797,316	1,068,359	3,942,976	1,411,333
Alcona.....	334,025	1,239,743	3,056,115	4,295,858	14,155,680	3,056,115	17,211,805
Alcona.....	308,250	13,292,492	252,022	13,544,514	14,721,711	252,022	14,973,733
Alcona.....	294,921	746,711	2,443,415	3,190,126	4,537,673	2,443,415	6,977,086
Alcona.....	629,290.56	7,082,620	2,699,833	9,782,453	4,690,147	2,699,833	7,390,000
Alcona.....	472,835	7,337,782	3,871,509	11,209,291	11,138,401	3,871,509	15,009,000
Alcona.....	361,876	14,831,180	1,681,816	16,512,996	4,133,123	1,681,816	5,814,939
Alcona.....	290,463.66	6,124,123	6,151,495	12,275,618	18,392,331	6,151,495	24,543,876
Alcona.....	363,983	18,834,896	2,261,819	21,096,715	1,705,664	2,261,819	4,000,999
Alcona.....	321,084.19	1,443,745	2,316,844	3,760,589	6,029,362	2,316,844	8,346,200
Alcona.....	691,347.95	6,928,406	2,119,472	9,047,878	6,790,578	2,119,472	8,910,050
Alcona.....	984,012	7,066,306	2,169,741	9,236,047	7,869,626	2,169,741	10,036,367
Alcona.....	392,050	10,040,275	3,769,570	13,809,845	13,067,830	3,769,570	16,837,400
Alcona.....	875,710	14,029,490	14,860,697	28,890,187	14,964,897	14,860,697	29,825,594
Alcona.....	696,023	87,972,940	1,814,981	89,787,921	9,189,415	1,814,981	11,004,396
Alcona.....	523,063	18,455,055	4,306,977	22,762,032	13,663,023	4,306,977	17,970,000
Alcona.....	342,996.75	9,351,876	3,841,158	13,193,034	13,465,381	3,841,158	17,304,539
Alcona.....	356,283	14,137,350	3,841,158	17,978,508	3,841,158	3,841,158	21,819,666
Alcona.....	278,811	1,304,824	3,841,158	5,145,982	3,914,536	503,402	4,608,000
Alcona.....	746,258.24	3,084,102	503,402	3,587,504	4,185,400	814,540	5,000,000
Alcona.....	337,067.80	5,029,500	814,540	5,844,040	4,185,400	814,540	5,000,000
Alcona.....	437,146	21,920,447	6,850,894	28,771,341	23,140,100	6,850,894	30,000,000
Alcona.....	350,089	18,021,049	6,290,618	24,311,667	18,021,049	6,290,618	24,311,667
Alcona.....	350,027.48	2,413,297	2,891,904	5,305,201	2,383,500	2,891,904	2,852,071
Alcona.....	838,157.02	57,000,396	31,459,569	88,459,965	31,459,569	31,459,569	60,000,000

Keweenaw.....	3,531,404	202,195	3,733,599	2,800,280	202,135	3,062,204
Lake.....	10,941,072	148,215	11,089,287	11,089,287	148,215	1,177,287
Lapeer.....	10,560,455	2,353,266	12,913,721	11,400,734	2,353,266	13,734,000
Leelanau.....	1,560,455	6,030,398	2,193,821	1,560,454	6,030,398	2,170,080
Leonia.....	21,937,620	6,632,682	28,570,302	20,968,658	6,632,682	27,682,240
Lewistown.....	10,850,740	3,142,353	13,993,093	9,357,605	3,142,353	12,500,000
Luce.....	1,311,040	1,853,375	3,164,415	1,195,117	1,853,375	1,550,000
Mackinac.....	15,929,130	5,474,577	21,403,707	14,987,665	5,474,577	2,77,553
Macomb.....	17,310,350	4,920,626	22,230,976	15,709,577	4,920,626	20,036,000
Manistee.....	3,087,321	3,013,473	6,100,794	5,480,577	3,013,473	6,084,355
Marquette.....	4,920,626	1,436,243	6,356,869	11,183,810	1,436,243	6,709,233
Mason.....	3,013,473	3,678,713	6,692,186	11,870,785	3,678,713	18,718,810
Menominee.....	1,600,489	456,245	2,056,734	6,026,528	456,245	6,404,789
Midland.....	324,578,11	3,017,065	327,595,176	3,168,168	3,017,065	3,704,750
Milwaukee.....	13,033,815	1,700,612	14,734,427	6,433,673	1,700,612	6,396,982
Monroe.....	6,680,350	3,112,392	9,792,742	2,435,785	3,112,392	10,112,390
Montcalm.....	7,784,805	7,819,905	15,604,710	13,431,815	7,819,905	3,100,000
Montmorency.....	22,560,676	7,015,700	29,576,376	5,250,388	7,015,700	16,348,900
Muskegon.....	4,313,311	3,112,392	7,425,703	1,014,275	3,112,392	7,000,000
Newaygo.....	4,313,311	819,905	5,133,216	8,034,254	819,905	984,800
Oakland.....	22,560,676	7,015,700	29,576,376	3,353,000	7,015,700	12,158,646
Ogemaw.....	4,218,225	865,893	5,084,118	4,196,075	865,893	4,772,965
Ontonagon.....	1,614,617	3,863,640	5,478,257	1,578,380	3,863,640	5,081,968
Osceola.....	3,282,752	530,279	3,813,031	3,174,340	530,279	1,962,000
Oscoda.....	4,695,282	367,044	5,062,326	2,435,586	367,044	3,402,630
Otsego.....	1,865,945	560,405	2,426,350	436,000	560,405	653,290
Ottawa.....	13,259,745	4,065,894	17,325,639	1,645,945	4,065,894	2,406,410
Presque Isle.....	1,920,246	473,307	2,393,553	12,641,116	473,307	16,700,000
Racine.....	23,264,310	47,304	23,311,614	2,225,246	47,304	2,706,553
Rock.....	9,313,165	1,562,427	10,875,592	345,940	1,562,427	283,474
Schoolcraft.....	1,772,006	1,029,049	2,801,055	9,428,665	1,029,049	35,163,656
Shiawassee.....	13,895,713	3,221,898	17,117,611	10,575,852	3,221,898	10,951,022
St. Clair.....	17,392,138	4,782,000	22,174,138	14,780,190	4,782,000	23,563,403
St. Joseph.....	11,106,724	3,170,794	14,277,518	11,626,224	3,170,794	15,002,018
Tecumseh.....	810,647	2,334,387	3,145,034	14,296,667	2,334,387	14,251,897
Van Buren.....	11,456,000	2,383,797	13,839,797	10,601,203	2,383,797	13,085,000
Washtenaw.....	26,224,750	7,716,001	33,940,751	26,224,750	7,716,001	33,930,700
Wayne.....	210,277,284	80,004,815	290,282,099	178,725,685	80,004,815	298,740,500
Wexford.....	3,715,033	1,412,913	5,127,946	3,680,367	1,412,913	5,401,500
Totals.....	\$1,017,071,643	\$311,561,048	\$1,328,632,691	\$923,876,583	\$311,561,048	\$1,235,896,025

From acreage statement made in 1906



Table showing the valuation of taxable property in the State of Michigan as equalized in 1901 by the State Board of Equalization with other information for comparison.

Counties.	Valuation as estimated by the State Board of Tax Commissioners in 1901.	Valuation as assessed by boards of supervisors in 1901.	Valuation as equalized in 1901 by State Board of Equalization.	Valuation as equalized in 1896 by State Board of Equalization.
Totals, -	\$1,702,471,041.	\$1,328,632,691.	\$1,578,100,000.	\$1,105,100,000
Alcona,	\$1,350,940.	\$1,098,014.	\$1,300,000.	\$350,000
Alger,	3,135,331.	2,677,402.	3,100,000.	2,000,000
Allegan,	22,679,356.	19,105,175.	21,000,000.	15,500,000
Alpena,	5,269,086.	4,787,461.	5,000,000.	4,000,000.
Antrim,	5,410,395.	4,552,833.	5,500,000.	3,250,000.
Arenac,	2,091,421.	1,810,678.	2,100,000.	1,250,000
Baraga,	4,569,997.	2,361,829.	2,700,000.	1,500,000
Berry,	14,414,957.	10,906,977.	15,000,000.	14,000,000
Bay,	26,077,673.	23,312,308.	32,000,000.	24,500,000
Benzie,	3,352,671.	2,787,616.	3,200,000.	1,750,000
Berrien,	36,022,128.	24,380,161.	30,000,000.	18,000,000
Branch,	20,721,424.	16,261,730.	19,500,000.	19,000,000
Calhoun,	39,267,985.	30,268,528.	37,000,000.	29,000,000
Cass,	16,860,523.	12,533,114.	15,500,000.	15,000,000
Charlevoix,	4,272,117.	3,496,441.	4,200,000.	3,000,000
Cheboygan,	4,839,110.	3,730,440.	4,500,000.	3,700,000
Chippewa,	12,622,958.	11,292,835.	12,500,000.	4,600,000
Clare,	2,536,354.	1,682,719.	2,200,000.	1,150,000
Clinton,	19,837,120.	16,302,979.	20,000,000.	18,000,000
Crawford,	1,527,210.	999,333.	1,200,000.	1,000,000
Delta,	12,269,056.	7,526,035.	9,400,000.	3,500,000
Dickinson,	12,461,483.	9,407,635.	11,200,000.	5,500,000
Eaton,	20,904,300.	18,702,686.	21,000,000.	19,000,000
Emmet,	8,221,557.	6,805,939.	8,000,000.	3,000,000
Genesee,	20,478,890.	24,986,391.	29,500,000.	24,000,000
Gladwin,	2,106,609.	1,705,564.	2,100,000.	1,500,000
Gogebic,	14,342,915.	9,240,254.	14,000,000.	14,000,000
Gr. Traverse,	10,259,376.	7,885,628.	9,500,000.	5,500,000
Gretiot,	15,896,023.	11,720,016.	15,500,000.	10,000,000
Hillsdale,	21,881,475.	17,780,060.	21,000,000.	21,000,000
Houghton,	180,107,562.	102,823,637.	140,000,000.	42,500,000
Huron,	13,475,318.	11,166,856.	13,400,000.	8,750,000
Ingham,	31,899,162.	22,762,032.	27,500,000.	21,000,000
Ionia,	22,280,679.	17,978,508.	21,500,000.	18,500,000
Iosco,	1,923,177.	1,633,216.	1,900,000.	2,000,000
Iron,	6,944,057.	4,267,564.	6,000,000.	4,000,000
Isabella,	8,040,717.	5,844,090.	7,500,000.	5,750,000
Jackson,	37,838,736.	28,786,341.	36,000,000.	30,500,000
Kalamazoo,	34,305,210.	24,302,267.	30,000,000.	26,500,000
Kalamas,	3,689,934.	2,881,908.	3,500,000.	2,750,000





Counties.	Valuation as estimated by the State Board of Tax Commissioners in 1901.	Valuation as assessed by boards of supervisors in 1901.	Valuation as equalized in 1901 by State Board of Equalization.	Valuation as equalized in 1896 by State Board of Equalization.
Kent,	\$106,344,208.	\$78,635,847.	\$90,000,000.	\$52,500,000.
Keweenaw,	*4,000,000.	3,773,559.	4,000,000.	1,500,000.
Lake,	1,764,094.	1,100,187.	1,400,000.	750,000.
Lapeer,	15,330,296.	12,899,731.	14,500,000.	14,000,000.
Leelanau,	2,861,708.	2,193,821.	2,700,000.	1,250,000.
Lenawee,	36,810,087.	28,581,342.	34,000,000.	30,000,000.
Livingston,	16,270,270.	13,993,080.	16,000,000.	15,000,000.
Luce,	2,200,317.	1,674,923.	2,000,000.	1,500,000.
MacKinnac,	2,637,678.	2,077,553.	2,500,000.	2,000,000.
Macomb,	31,026,777.	20,997,530.	25,000,000.	18,500,000.
Manistee,	13,395,685.	11,183,810.	13,500,000.	9,000,000.
Marquette,	25,399,293.	24,166,574.	30,000,000.	18,000,000.
Mason,	8,010,189.	7,358,769.	7,500,000.	4,500,000.
Meecosta,	5,439,702.	3,755,655.	5,000,000.	4,500,000.
Menominee,	14,499,968.	9,692,386.	13,500,000.	7,000,000.
Midland,	5,507,021.	3,515,704.	4,500,000.	2,500,000.
Missaukee,	2,944,104.	2,146,414.	3,000,000.	2,500,000.
Monroe,	21,801,258.	16,948,000.	20,500,000.	16,000,000.
Montcalm,	13,097,029.	8,389,962.	13,000,000.	9,500,000.
Montmorency,	1,513,683.	1,014,275.	1,500,000.	600,000.
Muskegon,	14,380,824.	11,065,646.	14,500,000.	11,000,000.
Nawasago,	6,756,464.	5,133,306.	6,000,000.	4,250,000.
Oakland,	36,222,033.	29,566,275.	34,000,000.	30,000,000.
Oceana,	6,144,246.	5,104,118.	6,000,000.	5,000,000.
Ogemaw,	2,259,907.	1,898,257.	2,300,000.	1,500,000.
Ontonagon,	12,960,593.	3,212,619.	8,000,000.	750,000.
Oscoda,	6,089,387.	4,219,796.	5,500,000.	4,000,000.
Oscoda,	809,028.	533,562.	700,000.	500,000.
Oshtemo,	2,593,826.	2,426,410.	3,000,000.	2,000,000.
Ottawa,	23,489,633.	17,318,629.	21,500,000.	14,500,000.
Presque Isle,	2,613,998.	2,303,553.	3,000,000.	750,000.
Rosecommon,	*500,000.	396,424.	500,000.	500,000.
Saginaw,	41,997,094.	34,058,820.	42,000,000.	36,000,000.
St. Clair,	34,691,206.	22,085,038.	30,000,000.	21,000,000.
St. Joseph,	16,225,598.	14,284,518.	18,000,000.	17,500,000.
Sanilac,	14,413,847.	10,865,592.	14,000,000.	8,500,000.
Schoolcraft,	5,502,143.	2,800,055.	4,000,000.	3,000,000.
Shiawassee,	21,302,210.	17,107,611.	21,500,000.	16,750,000.
Tuscola,	16,983,804.	14,286,697.	17,500,000.	10,500,000.
Van Buren,	18,063,328.	13,849,797.	16,000,000.	14,500,000.
Washtenaw,	36,143,162.	33,939,760.	37,000,000.	31,000,000.
Wayne,	326,264,047.	290,222,099.	297,000,000.	205,000,000.
Wexford,	8,517,071.	5,527,946.	6,000,000.	4,500,000.

336

484      *Portions of Exhibit "C," being the report of the board of State tax commissioners and State board of assessors for the years 1901 and 1902, addressed to the governor and dated December 15, 1902.*

*Offered by complainant.*

Defendant's counsel objects to the introduction of this exhibit and to any part or parts thereof and to any and all testimony based upon or explaining the same as immaterial irrelevant and incompetent.

485      Act No. 154 of the public acts of 1899, by which the board of State tax commissioners was created, defines their duties as follows:

SEC. 150.

1. To have and exercise general supervision over the supervisors and other assessing officers of this State, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this State liable to assessment for taxation shall be placed upon the assessment rolls, and assessed at their actual cash value.

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations, and individuals failing to comply with the provisions of this act; to prefer charges to the governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the attorney general or any prosecuting attorney in the State to assist said board.

3. To receive complaints as to property liable to taxation that has not been assessed, or has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if found to exist.

4. To see that each county in the State be visited by at least one member of the board as often as once each year, to the end that all complaints concerning the law may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

5. To require from any officer in this State, on forms prescribed by said board of State tax commissioners such annual or other reports as shall enable said board of State tax commissioners to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the State under this act; the amount of taxes assessed, collected and returned delinquent, and such other matter as the board may require, to the end that it may have complete and statistical information as to the practical operation of this act.

6. To inquire into and ascertain the valuation of the properties of

corporations paying specific taxes under any of the laws of this State, and to ascertain the actual rate of taxation as based upon the valuation of said properties that is being paid by said corporations, and to this end said board shall require reports from, and make investigations, as to the properties of such corporations in the same manner and to the same extent as if said corporations were paying taxes under this act.

7. To make diligent investigation and inquiry concerning the revenue laws and systems of other States and countries, so far  
436 as the same is made known by the published reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the legislature at each regular session thereof, such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

8. To further report to the legislature at each regular session thereof, or at such other times as the legislature may direct, the whole amount of taxes collected in the State, for all purposes, classified as to State, county and township and municipal purposes, with the sources thereof; the amount lost; the cause of the loss; the proceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

9. To further report to the legislature at the beginning of the regular session, specifically, the true valuation of the properties of corporations paying specific taxes and the rate of taxation actually paid on said valuation and the true valuation of all other properties of the State, and the rate of taxation the same are paying, to the end that the legislature shall have the information necessary to rearrange the rate or system of taxation on said properties, so that all taxable properties of the State may be taxed uniformly.

10. To be present at each meeting of the State board of equalization and furnish such information as said board may require, and that may assist said board in the performance of the duties imposed upon it by law.

But for still better comprehension of the work put upon the commission one should study the whole act, which here and there confers further powers and duties, with the details necessary to be employed to carry same into effect and operation.

#### Advisory and Supervisory Work of Commission.

Under sub-divisions I and II of section 150, which provide for the supervision of assessing officers and the advisory capacity which the board shall sustain to them, the commission has previous to the time for making the assessment in the years 1901 and 1902, prepared and sent to each assessing officer in the State a circular letter of instruc-

tions, taking up each point in the law relative to assessments which seemed ambiguous, endeavoring to make the same clear and explicit. Instructions have also been sent to boards of review throughout the State, calling their attention in plain and unmistakable terms to their duties, and urging all to assist in bringing to a legal standard, namely, "cash value," the assessed valuations of all the properties of the State. Assessing officers have also received each year a transcript of the record of all undischarged mortgage credits owned by residents of their assessment district, as reported by the registers of deeds of the various counties. The properties of private corporations have likewise received considerable attention at the hands of the commission, and much valuable information concerning this class of property brought to their attention.

487 Public service corporations, such as electric railways, electric light, water-works and gas companies, whose physical properties have an increased value by reason of special privileges or franchises which they enjoy, have been the subject of investigation, the result of which disclosed these facts: First, that such properties had, in a majority of cases, been assessed much lower relatively than the average properties in the township or city where they are located. Second, that the majority of assessing officers were uninformed as to methods to be employed in determining their true, or "cash value." The information obtained has been furnished the supervisors and assessors who have generally made use of it in the preparation of their assessment rolls. Instruction has also been given as to the line of investigation to be pursued in the future for determining the valuation of such properties which will, we believe, be productive of much good.

An examination of the various probate records in the State disclosed the fact that a large amount of personal property, belonging to the estates of deceased persons was escaping taxation, either through the ignorance or inattention of assessing officers. In one county over \$2,225,000 of assessable personal property was found that had escaped the attention of the supervisor; in others, \$600,000, \$300,000, \$150,000, and \$1,500,000. In the first four cases those amounts were added to the assessment rolls by "special reviews," and in the fifth case the facts were discovered in time to notify the assessing officer before his roll was completed. A system has since been established by which we hope to be able to place information relative to these matters in the hands of the supervisors and assessors previous to the time of taking their assessments.

\* \* \* \* \*

488 To sum up briefly, the three things mainly responsible for undervaluations and failure to discover personal property liable for taxation, are jealousy, timidity and favoritism. We believe that these evils can be overcome, at least to a great extent, by mandatory provisions of law requiring a sworn listing of personal property by the owner, and advisory, supervisory and corrective powers over assessing officers.

\* \* \* \* \*

Much of the progress made is a result of the response of assessors and supervisors to our advice and instructions regarding the law and how it should be applied. There are many instances, however, in which we have been compelled to make use of the corrective power given us by the law, but this will be treated more fully in another part of this report.

\* \* \* \* \*

489

Page 16, EXHIBIT C.

We believe the meetings with boards of supervisors productive of much good. In most of them there was discussion of the laws relating to the assessment of property; the supervisors showed an active and intelligent interest in the subject and expressed a desire for a better knowledge of the law relating to their work, and manifested a willingness to be governed by it.

The law of assessment in many of its sections is somewhat ambiguous or is not easily understood by men not accustomed to its interpretations and application, and in these meetings different views were expressed and different interpretations were offered of sections of the law which are of general and even universal application, and of which, in order to secure a proper and uniform assessment, but one interpretation should obtain. The commissioners present at these meetings endeavored, and in many cases were able to solve these troublesome questions, and to assist assessing officers to a better knowledge of the law. We found supervisors in need of help to determine the proper manner of assessment of personal property of different kinds, particularly when and to whom it should be assessed, and of arriving at the value of some kinds of personal property. We found, for example, supervisors understanding that assessment of credits must be at their face instead of their actual value, and found also that too little advantage had been taken of the wise provision of the tax law permitting exemption of taxable property belonging to persons who, on account of poverty, are unable or should not be asked to pay taxes. We also found it necessary to speak of and explain the necessity of the use of blank statements to bring to light personal property subject to assessment and to explain their use.

It would be impossible to enumerate the questions raised and the matters discussed at these meetings; but with them all, we emphasized the importance of listing all property subject to tax-  
 490 ation, and assessment of all at its cash value, endeavoring to point out that equal taxation and uniformity of assessment throughout the State can be accomplished in no other way; that while the old plan of assessing property at a percentage of its value prevails, and each supervisor uses his own judgment of the percentage to be applied in his district, there is danger of as many different percentages as supervisors in a county, and the property of no two counties will be assessed by the same standard of value. These meetings were at the same time profitable to the commissioners, as

they were brought in touch with the assessing officers and learned thereby the views of practical experienced men in the matter of assessment of property and in the execution of the laws of the State relating to the same.

Subdivision 3 of section 150, General Tax Law, clothes this board with a power not delegated to any other tax commission in the United States, namely, that of original jurisdiction over the acts of all assessing officers in the State, so that upon complaint made, and proper evidence produced, or from personal knowledge of conditions, the board or any member thereof may, upon proper notice, by review correct all improper or illegal assessments, either by adding to or deducting from the assessment of any person such an amount as will bring such assessment to true cash value, or by placing upon the roll any properties omitted therefrom, and we have frequently been called upon to exercise this authority during the past two years.

\* \* \* \* \*

Page 19.

Considerable time and attention has been devoted to the proper assessment of the property of street railway companies. In 1900, no very reliable data as to the mileage and financial standing of these corporations had been collected, and the commission was not in possession of information of sufficient accuracy to advise the local assessing officers as to the value of this class of property. Enough was known, however, of the lack of uniformity in its assessment of this property prevailing among assessing officers to warrant a careful research in order that accurate information might be had.

This work was commenced in October, 1901, and concluded about the 1st of April, 1902. It consisted of a thorough inspection of all physical property, such as road bed, right of way, rolling stock, power houses and sub-stations and car barns. At the same time a complete transcript of the records of the secretary of State, with reference to street railway property, was obtained. From these records, the names of some three-hundred companies, dating back to 1861, were obtained, and traced down to 1901. Of this number but forty-two were found actively engaged in operation or construction of lines in 1901, the remainder having disappeared through consolidations and other changes.

All franchises and rights received from the local authorities were carefully examined, special attention being paid to rates of fare, and duration of rights generally. The financial condition of the companies was also investigated along the line of earnings, stocks and bonds and similar objects.

Armed with this information, the commission held a great many meetings with the supervisors and assessing officers of the various counties in which street railway property was located and spent much time in laying before them the results of its investigation.



At these meetings, the method of assessing was carefully discussed and discrepancies in the past pointed out.

\* \* \* \* \*

#### Page 20.

Assessing officers having railway property to assess have usually been diligent in their efforts to learn its true value, but it is comparatively a new kind of property and to estimate the value of any part of it with even a reasonable accuracy requires a knowledge of the entire property and experience possessed by few assessing officers.

After these conferences with the assessing officers, embracing every district in the State in which street railway property was located, nothing further was done until the local officers had completed their rolls and the same had been passed on by the local boards of review. Then a report was required from the assessing officer of each one of these districts, in order that this board might know the exact valuations placed upon all the property. In many cases, the assessors, disregarding our suggestions, chose to take their own estimates of value and made no appreciable change from their old methods; but a large number profited by the information gained, and made creditable efforts to place the property on the rolls at or near cash value.

The commission found it necessary to review most of the properties and did so during the period elapsing from close of the rolls to the second Monday in October, 1902. The result of the combined efforts of the local officials and this board shows an increase for 1902 of \$7,000,000 over the assessment of 1901 in street railway property, of which \$6,000,000 was personal and in existence and use during the two years, besides about \$2,500,000. in entire new property.

#### Page 21.

#### Summer Resorts.

We found it necessary in the last two years to hold several reviews of the property of summer resort associations, and of property of the same kind belonging to individuals. There is a large amount of property in this State favorably situated for and used as summer resorts; many residents of Michigan own such property and use and occupy the same during summer months, and thousands of residents of other States are interested in resort associations or own the property themselves and occupy it for a few months of the year.

\* \* \* \* \*

493 We made careful examinations in several localities having this kind of property, and made unusual effort to find true values, with the result that we placed upon the assessment rolls of these localities additional assessments to the amount of almost \$2,000,000.

There is a large amount of resort property in the State of which we have been able to make no examination, but we have reason to believe that much of it is underassessed, and, as far as possible we propose to give it attention during the coming year to see that it no longer evades reasonable assessment.

\* \* \* \* \*

## Page 22, EXHIBIT C.

### General Reviews.

In September, 1901, a review was held by Commissioners Dust and McLaughlin on the rolls of the city of Holland, where the board of review had disregarded the judgment of the supervisors to the extent of making an arbitrary reduction of twenty per cent. of the assessment of nearly all the property of the city. After a thorough examination of the property by and under the direction of these commissioners, the rolls were practically restored to the condition in which the supervisors had presented them to the board of review. This review, and one of the cities of St. Ignace and Mackinac Island in September, 1900, by ex-Commissioner Oakman, were the only general reviews held previous to the year 1902, the time of the commission having been fully occupied in special reviews where properties of great value were omitted from the roll or grossly undervalued or where it seemed advisable on account of the character, extent or value of property involved, to consider it carefully and establish a standard for the future guidance of assessing officers.

494 During the year 1902, however, general reviews have been held in some portions or all of the following counties,—Bay, Charlevoix, Jackson, Kalamazoo, Kent, Mackinac, Macomb, Saginaw and St. Clair. In May of the present year the common council of the city of Port Huron passed a resolution requesting the commission to review the assessment rolls of that city. A preliminary investigation was made, which developed the fact that the only way to correct the irregularities and illegal assessments was by a re-assessment of the entire property of the city, and an order for a general review was accordingly made, and every description of real estate in the city inspected, valued and re-assessed. The personal property of the city also received thorough investigation and re-assessment. This resulted in an increased valuation of real estate to the amount of \$3,183,617, and in personal \$851,020, or a total increase of \$4,034,637.

In what spirit this work was received can perhaps best be illustrated by two extracts from one of the leading daily papers of the city. The first one appeared while the re-assessment was being made, and is as follows:

“Of course the tax commission will raise Port Huron. They have to make a showing to hold their job.” “While they are personally good fellows, few will give them the old greeting of ‘Sorry to part, happy to meet again.’” “It is exasperating to men imbued

with American ideas to be hauled before a quartette of strangers in the court house, and then have their secret business affairs corkscrewed out of them in a rigorous cross-examination. In so far as Port Huron is concerned the people would gladly send this tax law and the commission which is making so drastic an application of its provisions into a reconcentrado camp for a few years."

About three weeks after the review had been finished, and the city taxes extended, and turned over to the treasurer for collection, the same paper said editorily:

"The work of the State tax commission has been before the people at Port Huron long enough for sentiment to crystallize, and there is no gain-saying the fact that their finding is daily becoming more popular. After all it is surprising when you consider the difficulty under which the commission labored, the short time in which they had to do their work that so few just grievances can be found. The general public does not seem to be much disturbed by the lamentations of a few rich men and a few wealthy estates which were tossed in the air; and no one believes that any of these are too high, and some are heard to urge that they ought to go even higher to make up for the many years in which they escaped their fair share of taxes. The hard fact which interests the people is that some 20 per cent. or less of the community will have to pay more taxes, and these are those who are personally able to pay, while the vast majority of property owners, wage earners—those who own their own little \$800 or \$1,000 or \$1,200 homes—will have less taxes to pay than before. The people have about reached the conclusion that the tax commission plays no favorites. The assessment on the whole is equitable, and a decided improvement upon the old method which for some unaccountable reason let the big fish escape while the small fish were caught and kept wriggling in the meshes of the net."

A thorough and systematic research into the question of real estate values and assessments in different counties has been in progress under the direction of the commission for over a year, and much time has also been devoted to the matter of personal property in the same counties. A comparison of the information obtained with assessments of 1902 resulted in general reviews being held in the counties of Bay, Jackson, Kalamazoo, Macomb and in the county of Saginaw, except the city of Saginaw; the county of Kent, except the city of Grand Rapids, in which a special review was afterwards held; the city of Mackinac Island and in St. Clair county, besides the city of Port Huron already referred to, in the townships of Clay, Columbus, Cottrellville, Kimball and the city of St. Clair; and the townships of Charlevoix, Evangeline Chandler, Norwood and Melrose in the county of Charlevoix. The

increase in real and personal assessment of such counties and districts, is shown by counties in the table below :

	Increase in real estate.	Increase in personal.	Total increase.
Bay.....	\$1,368,640	\$550,250	\$1,918,890
Charlevoix.....	483,380	40,020	523,400
Jackson.....	4,695,235	569,667	5,264,902
Kalamazoo.....	1,876,365	1,724,734	3,601,099
Kent.....	2,622,260	852,727	3,474,997
Mackinac.....	189,510	157,525	347,035
Macomb.....	2,087,685	595,660	2,683,345
Saginaw.....	1,975,420	70,300	2,045,720
St. Clair.....	4,297,427	1,675,000	5,972,427
Total.....	\$19,595,922	\$6,235,883	\$25,831,815

Special reviews were held in the counties of Alger, Allegan, Calhoun, Huron, Houghton, Marquette, Lenawee, Oakland, Ottawa, Washtenaw, and Wayne, and in the city of Grand Rapids, and an aggregate of \$6,192,315 added to the rolls reviewed, making a total increase of \$32,024,130 by means of general and special reviews for the year 1902. Of the amount added by special reviews, over \$5,000,000 was personal property.

\* \* \* \* \*

497 In many localities we have helped supervisors to learn the quantity and value of timber, mills and lumber, and in several of our reviews in the past two years assessments of this kind of property have been considered. By this work of supervisors and by our work in reviews, large sums have been added to the rolls and we are preparing for the same line of work next year.

We believe this amount is still many millions below the value of real estate and personal property of the State; but it is so much greater and so much nearer the true value of assessable property of the State than ever reached before that the State is to be congratulated.

\* \* \* \* \*

The definition of cash value in this State is so broad that it necessarily includes every element of value, and the conception of the valuation of railroad property that does not include its whole meaning must be incomplete. It is, therefore, the opinion of this board that no one plan may be arbitrarily applied, but that each individual property should be subjected to an examination covering every possible phase of the question.

In August, 1900, Mortimer E. Cooley, professor of mechanical engineering at the University of Michigan, was employed by this board to appraise the physical property of railroad, telegraph, telephone, plank-road and river improvement companies, and the re-

sults of this work were shown in the last annual report of the commission. At the same time Henry C. Adams, professor of political science at the University of Michigan, undertook the examination of the financial operations of the railroad companies of Michigan, and the results of his work, with those of Professor Cooley, were finally completed in May, 1901, and compiled. This compilation is now known as the Michigan railroad appraisal. Ex-Commissioners Robert Oakman and Milo D. Campbell also made

498      respective examinations along the line of net earnings and the market value of railroad securities. Commissioner Freeman of the present board, however, held the opinion, as above stated, that no one plan of valuation should be rigidly applied, but that all plans should be considered in arriving at value.

\*      \*      \*      \*      \*      \*      \*

It is important to know from the physical stand-point what it will cost to reproduce a given property, and this figure could but rarely be found in the books of any railroad company that has operated for a period of years. It is not presumed that the cost and present value of the physical property in any given case are exact, but they sum up what may be called the first fundamental element of value and establish a definite starting point from which to work. A railroad property may be worth more or less than its physical value, but how much more or how much less will be largely dependent upon the amount invested taken in connection with the earning power and other governing principles.

The Michigan railroad appraisal, conducted by Prof. M. E. Cooley and a corps of some seventy-five engineers, occupied the period from about the first of September, 1900, to the 30th of May, 1901, not all of the force being engaged upon the work, however, during the entire period. The plan that he evolved for the accomplishment of his purpose was first a division of the forces into two parts, namely, field men, and office men. The latter were sent to the various railroad offices in small groups and there gathered all data that was available regarding the property of each company.

\*      \*      \*      \*      \*      \*      \*

498½      The investigations pursued by Prof. Adams, as before stated covered the economic side of the question of railroad valuation, and were designed to supplement the physical values found by Prof. Cooley. The results of his work have also been collected in book form and filed in the office of the board.

\*      \*      \*      \*      \*      \*      \*

The results obtained by Ex-Commissioner Robert Oakman in his capitalization of the net earnings of railroad property are shown in the last report of this commission and from another part of the investigation carried on during the progress of the Michigan railroad appraisal. Ex-Commissioner Campbell pursued the study of the

stocks and bonds of the companies, and his results are also shown in the report of this board for 1900.

The dates of incorporation of the various companies with correct corporate titles were obtained from the office of the secretary of state, and much general information bearing upon the history of the companies was received from the office of the railroad commissioner. Reports of Michigan railroad companies to the Interstate Commerce Commission were obtained and the records from thirty different States of the Union with regard to the valuation and assessment of railroad property consulted.

499

## Page 69, EXHIBIT C.

To carry these views to effect, the following certificate was attached to the assessment roll of the State board of assessors:

"The undersigned, the State board of assessors in and for the State of Michigan, acting under and pursuant to the provisions of act number 173 of the public acts of the State of Michigan for the year A. D. 1901, do hereby certify that the assessment roll, to which this is attached, is the assessment roll made pursuant to the provisions of said public act.

"And do further certify that said board has ascertained and determined the average rate of taxation for the year one thousand and nine hundred and two, levied upon the other property of the State, other than by said act, upon which ad valorem taxes are assessed for State, county, township, school, municipal and other purposes for the present year, to be thirteen and sixty-eight thousand nine hundred and five one-hundred thousandths dollars, (\$13.68905) per thousand dollars of assessable valuation.

"And do further certify that the method by which said board ascertained and determined said average rate was by taking the whole amount of taxes levied upon the property of the State assessed under existing laws, other than by said act, which amount the said board ascertained from the records of taxation of the State and the several counties, townships, school districts and municipalities for the current year for State, county, township, school and municipal purposes, to be the sum of twenty-three million four hundred and seventy-six thousand seven hundred and thirty-three and fifty-five one-hundredths dollars, (\$23,476,733.55), and dividing the same by the sum of one billion seven hundred and fifteen million dollars (\$1,715,000,000), which said sum, according to the information and knowledge of this board is the total true cash value of the property upon which said ad valorem taxes were assessed for the current year for said State, county, township, school, and municipal purposes. And that in obtaining said cash value, said board considered reports

500

## Page 70, EXHIBIT C.

received from the various assessing officers of the State, the total valuation of said properties as assessed by assessing officers and other



information obtained by said board bearing upon the cash value of the properties so assessable.

"In witness whereof the said State board of assessors hath signed this certificate at the State capitol in the city of Lansing State of Michigan, this twelfth day of December A. D. 1902.

"AMARIAH F. FREEMAN,

"MANVILLE JENKS,

"WILLIAM T. DUST,

"JAMES C. McLAUGHLIN,

"IRA T. SAYRE,

"Members of the State Board of Assessors  
in and for the State of Michigan."

\* \* \* \* \*

501 We have found in our investigations, where special reviews have been held, that corporate interests control the elections of the assessing officer and board of review for its locality; that in many cases such officers were in the direct employ of the corporation and that the per cent. of assessment to actual value has ranged from as low as seven per cent. up to twenty-five per cent. and thirty per cent. We believe we are justified in saying that such conditions are very rare in the State at the present time, and while we are endeavoring to avoid imposing excessive burdens upon any interest, whether corporate or individual, we have considered it our duty to bring all such properties to a relatively equal valuation with other property in the township, county or city, where such corporate interests might be located.

Extract from the paper read by Commissioner Freeman before the Michigan State Grange, December 9th, 1902, printed with the report of the board of State tax commissioners and State board of assessors as part of Exhibit "C."

#### Page 101, EXHIBIT C.

When the tax commission was created the taxable property of the State as assessed and reviewed was \$968,189,087. The next year, 1900, under the supervision of the commission for the first time, it was \$1,317,450,028, an increase over the previous year of \$349,260,941. In 1901, it was \$1,335,109,918, an increase over 1900 of \$17,659,890. In 1902, it is \$1,418,237,058, and increase over 1901 of \$83,010,236, a total increase of \$450,047,971. Of the total assessment for the year 1899, \$142,330,376 was personal. Of 1900, \$310,997,015 was personal, an increase of \$168,666,639. In 1901 the personal assessment increased \$4,144,070, and in 1902, \$16,279,646, or a total increase of personal property of \$189,090,351 in the three annual assessments occurring under the supervision of the commission,—property that never before appeared in these amounts upon the rolls of the State. For the previous thirteen years the increase in personal was only \$3,042,858.

502



The fact that the assessment increase for 1901 was less than 1902 emphasizes the force which the commission has exercised over these assessments when in full operation. You will remember in the winter and spring of 1901 it was practically disorganized at this very important season of the year—just before the assessment period. When reorganized, it had but a short time to prepare for the approaching assessments. Besides, that other important if not paramount duty was upon it to prepare for the State equalization and know the worth of this State and each county by the month of August following, to the extent its time was taken, and these other duties and work relaxed to no little degree and the assessments showed it. However it must not be expected that it can keep up these great increases in the future. Diminution in this respect will begin the coming year, although a great field of endeavor seems still open for work.

And need I cite more proof than the omission of these vast sums from the rolls to prove that the assessments theretofore had been grievously wrong and that some supervisory force or power was and is required to adjust such appalling disregard of law and duty? And the natural growth of the State necessitates a continuation of this corrective force.

503

## EXHIBIT C, Page 114.

## Statistical Tables.

The following tables, numbers 1 and 2, are worth the careful study of every person who would understand present and past conditions relative to the assessment of property in this State. These tables are made upon the same plan. Number 1 relating to real and number 2 to personal property.

Table No. 1 shows that the real estate of the State was assessed in 1886 at \$713,120,709 and in 1899 at \$825,858,711, an apparent increase of \$112,738,002 in 13 years. Without explanation this might be taken as a natural increase throughout the State, but further examination shows that it is not so. During the period mentioned the assessed valuation of the real estate of the county of Wayne increased \$84,194,940, and in the county of Houghton, the increase amounted to \$43,959,959, a total increase in these two counties of \$128,154,899 or \$15,516,897 more than the net increase in the whole State.

There was also an increase in 28 other counties amounting to \$41,580,415, making an aggregate increase of \$169,735,314. But in 53 counties, there was a decrease of \$56,997,312, leaving the net increase \$112,738,002, as above stated.

Passing to table No. 2, we find the same conditions existing in the assessment of personal property. The assessed valuation of this class of property in 1886 was \$139,458,937 and in 1899, \$142,330,376, an increase of only \$2,871,419. But in Wayne county alone, the increase

had been \$13,518,635 leaving a net loss of personal property assessed in the balance of the State of \$10,647,216.

Only 24 counties showed a greater assessment of personal in 1899 than in 1886 and 59 counties showed decreased assessment.

This was one of the conditions that confronted the tax commission when it was created, a falling off in the assessed valuation of both real and personal property in nearly every county notwithstanding the great increase in created and discovered wealth. The result of the work of this commission is shown in the second and third columns of each table. The real estate table shows that the assessed valuation has been increased \$260,957,616 over what it was in 1899, or nearly 24 per cent. increase in three years. It was the common belief that personal property was not being assessed at as high a percentage of its actual value as real property and that much personal was escaping altogether and the work of the commission has been devoted largely to correcting abuses in assessing this class of property. The result is most gratifying and is shown in table No. 2. It will be seen that the assessed valuation of personal property has increased from \$142,330,376 in 1899 to \$331,420,731 in 1902, an increase of \$189,090,355 or over 132 per cent. in three years, every county in the State showing a substantial increase over that in 1899.

While there has been a very large increase in the assessed valuation of both real and personal property since the creation of this commission, there are a great many counties and assessing districts that have not brought their assessments to the constitutional requirement. One of the most striking facts brought out by table No. 1 is that there were 17 counties in the State where the real estate was assessed at less value in 1902 than in 1886. In some of the northern counties the reduction in assessed valuation may be accounted for by the fact that they once contained large quantities of valuable pine which has since been removed leaving thousands of acres of "stump" lands of but little value. But we must seek further for a reason why some of the best counties in the southern part of the State are of less value to day than they were sixteen years ago. These conditions will be carefully investigated by this commission as soon as it is possible to reach them.

(Here follows Exhibit C, marked pages 505, 506, 507, 508, 509 & 510.)

DOUT(S) IS/ARE TOO LARGE TO BE FILMED



511 Complainant rests.

512 Offered by Defendant.

From Message Governor Piugree to Legislature of 1897.

Mr. BUTTERFIELD: We object to it as immaterial.

Mr. WYKES: It reads as follows: "I also recommended in order to the proper distribution of the public burdens, that all forms of wealth bear their just proportion of taxation. The policy of continuing the system of specific taxation of corporations as the sole resource of the State from such organizations, which originated when the State was new and which favored the promoters of needed works for small and scattered communities, has long been regarded with disfavor by the people of this State, who contend that the time has arrived when the well known inequalities of taxation should be adjusted and apportioned according to values.

There is nothing new or novel in this recommendation. In 1877, Governor Bagley took occasion in his address to the senate and house of representatives to emphasize the inequalities of specific taxation of corporate property, which he contended should be taxed locally, according to its value like other property.

In the same year Governor Croswell recommended improved methods for uniformity in levying taxes.

In 1887 Governor Luce recommended the equalization of taxation and in 1891 recommended for purposes of revenue a tax on bequests, on corporations, and an income tax.

In 1891 Governor Winans recommended equalizing taxation as between classes of property paying specific taxes and property under assessment, claiming that the assessed property pays double the tax paid by property upon which specific taxes are levied. He favored the local taxation of corporate property and doubted the policy of exempting any property from equal taxation.

513 It will thus be seen that the contention of the people against the system of solely specific taxation of corporations found expression at the capitol through several of the governors of the State, regardless of party, and as early as the seventies, and that the recommendations were in favor of taxing the property of the corporations as other property is taxed.

The question, therefore, is one no longer for debate but for energetic action, since it has been under consideration for twenty years.

While I do not believe that the system of specific taxation and the method of its distribution in support of the common schools should be disturbed, I recommend that steps be taken in the form of local or general taxation to make corporations bear their proper share of taxation."

From the Special Message, May 3, 1897, of Governor Pingree.

Mr. BUTTERFIELD: The same objection.

"In my first message, I referred in detail to the inequality and injustice of our present tax laws, so far as they effect quasi-public corporations. I called your attention to the demand which comes from many sources that corporate property should be taxed in the localities where it is situated, and recommended the creation of a department of taxes and assessments, to be composed of a board to be appointed by the governor and to include some, if not all, of the officials who now have supervision of the corporations to be affected. I suggested that this board should determine the exact value of all corporate property not now taxed locally and levy taxes thereon in the same proportion as private property now bears. \* \* \*

I desire in this connection to say that I am not wedded to any particular system of taxation; any method that may be adopted to secure substantial equality will meet with my hearty approval.

514

#### "Injustice of Specific Taxation.

The system of specific taxes applied to only a part of the property of the State cannot be continued for any length of time without producing great injustice. It will be readily seen that if all the property of the State was to be taxed specifically and a fixed rate determined upon in advance, it would be impossible to meet any of the emergencies which from time to time arise."

"There is but one rule consistent with honesty; that rule is to place all property upon the same footing; to make every one pay his share and to ask no one to pay more than his share. No one should ask the railroads to do more than they insist upon others doing. No one should be satisfied with anything less.

To increase the present tax by an insignificant amount would be merely trifling with the rights of the people. What is demanded is a substantial and *bona fide* effort to equalize taxes and make every one pay his share.

It is not my intention to recommend such a change in our present system as will injuriously affect the primary school fund to which specific taxes are now devoted. I trust you may be able to frame such a law as will impose upon railroads their just proportion of taxes and at the same time so distribute the amount raised that what is now paid to the primary school fund shall be increased rather than diminished."

"It is assumed by many that in advocating a change in the manner of assessing railroad property so as to tax it upon value instead of upon earnings, a new departure is proposed. This is untrue. From 1846 to 1893, the chartered roads without exception paid a specific tax upon the value of their property. Most of them do so still. From 1855 until 1871, the railroads organized under the gen-

515 eral laws of the State paid a specific tax upon their capital stock paid in. The system of taxing earnings began in 1871. It has worked disastrously for the State. It is objectionable in many ways. It opens a door for fraud against which the State has no protection. The State is practically compelled to accept the reports made to it by the railroad companies."

From the Proclamation, Governor Pingree, Convening Legislature in Special Session, March 22, 1898.

Mr. BUTTERFIELD: The same objection.

"By section six of article five of the constitution of the State of Michigan, it is provided that the governor shall take care that the laws be faithfully executed. By section seven of the same article, he is given the power to convene the legislature on extraordinary occasions.

By section eleven of article fourteen it is made the duty of the legislature to provide an uniform rule of taxation. By section twelve of the same article 'all assessments hereafter authorized shall be on property at its cash value.'

"These provisions have been a part of the fundamental law of the State since 1850. In violation of the spirit if not the letter of these provisions of the constitution, laws have been passed from time to time by which railroad companies, express companies, telegraph and telephone companies, now owning according to their sworn returns at least one-third of the property of this State, are required to pay only about one twenty-sixth of the tax levied for State, county and municipal purposes, leaving their just proportion of supporting our schools, asylums, and other public institutions and defraying the public expenses to fall upon the farmers, laborers, manufacturers and other property owners of the State.

Taxation has in many parts of the State become in the nature of confiscation, the amount levied being greater than the property taxed can be made to produce. \* \* \*

In obedience to this duty, I hereby call the legislature of the State to meet in extraordinary session on Tuesday, the twenty-  
516 second day of March, 1898, at noon of that day, to consider the question of the taxation of railroad companies, express companies, telegraph and telephone companies and such other matters as shall be submitted by special message."

From Message to Same Special Session, March, 1898.

This message, after quoting the proclamation, portions of which just read, continues:

"I have cited this proclamation in full because by section fifteen of article four of the constitution it is provided as to the legislature, that 'when convened in extra session, \* \* \* they shall legis-



late on no other subjects than those expressly stated in the governor's proclamation or submitted to them by special message.'

The proclamation explains itself.

You are called upon to consider the question of taxing railroad companies, telephone companies, telegraph and express companies, and for no other purpose."

"The first essential of just taxation is that it shall be equal. To exempt one from taxation is to rob another. To provide a low rate for one and a high rate for another is despotic.

In my message of January 6, 1897, I called your attention to this subject and suggested that a board should be appointed which should determine the exact value of all corporate property not now taxed locally, and levy taxes thereon in the same proportion as private property now bears.

In my message of May 6, 1897, I again called your attention to the subject and expressed the hope that you might devise some means of equalizing in a measure at least, the burdens of taxation.

At that last session an act was passed increasing to some extent the tax now levied upon the earnings of railroad companies.  
517 It was asserted that this act would bring into the treasury between two and three hundred thousand dollars. No taxes have yet been collected under it, but from the most reliable estimate that can now be made, it will yield only about \$100,000.

The Michigan Central and Lake Shore & Michigan Southern Companies, the two most wealthy and powerful companies of the State, claim that the bill does not apply to them, and they assert that because it was passed as an amendment to the general railroad law, they are protected from it by their special charters.

It is more than likely that the act will lead to a serious and prolonged litigation. If the contention of the companies should be sustained the result would be that as between railroads themselves, the additional taxes imposed by the act of the last session will fall upon the companies least able to bear it.

The system of taxing earnings is wrong in principle and unsatisfactory in results.

The railroad commissioner is required to file with the auditor general a computation of the amount of the tax which will become due from each of the railroad companies, which computation is to be based upon the report of the railroad company for the preceding year. This places the State absolutely at the mercy of the railroad company. It is compelled to take such reports as are made to it. The privilege of examining the books of the company is a useless one. The work would be almost endless, and even if well done, uncertain in its results.

'Where the railroads lie partly within and partly without this State, *prima facie* the gross income of the company, for the purpose of taxation, are the actual earnings of the road in Michigan.' Railroad law, section 106.

This can be only ascertained from the company itself; it may

credit such portion of its earnings as it sees fit, to its Michigan business. The State is compelled to trust entirely to the method of division adopted by the company.

518 I do not wish to charge fraud upon any of the companies doing business in this State. What I insist upon is that the State should never be at the mercy of any tax-payer, and that a system so open to frauds should never have been adopted, and having been adopted, should be abandoned at the earliest possible moment for one under which the ostensible property of the company can be fairly and honestly taxed.

### Railroad Companies.

Railroad companies in this State are not bearing their just proportion of taxes. For the purpose of illustration, I desire to call your attention to the official figures of 1895, which are not materially different from those of the present year, and which, having been acted upon, are more certain for the purposes of computation.

The entire value of the assessed property of the State in 1895, as equalized by the boards of supervisors, was \$818,086,160.00. The board of review, acting under section 1239 of Howell's Statutes, fixed the average rate of taxes for State, county and municipal purposes, at .028.

The total cost of railroad property in the State, as returned by the companies and verified by the affidavits of their officers for the same year, was \$301,003,148.44.

If the companies had been assessed upon this sworn valuation their taxes for that year, at the average rate, would have amounted to \$8,428,088.15. The taxes which they paid were \$741,408.77. Their tax amounted to a little less than one-quarter of one per cent. upon their own sworn valuations. It was less than one-eleventh of the percentage paid by other taxpayers of the State.

The average rate of taxation, as fixed by the board of review for the year 1897, is reported to me as three per cent. The taxes  
519 to be paid by the railroads do not materially differ from those collected in 1895.

The enormous inequality to which I called your attention in my special message of May 6, 1897, has increased instead of growing less.

### The Situation.

We are confronted with this situation: The ordinary taxpayers of the State are bearing an annual burden of three per cent. upon the value of their property. The railroad companies are paying less than one-quarter of one per cent. upon their properties and less than one-eleventh of the proportion borne by others.

\* \* \* \* \*

### Injustice of Specific Taxes.

The system of specific taxes when applied to only a part of the property of the State, cannot be continued for any length of time without producing great injustice.

It will be readily seen that if all the property of the State were to be taxed specifically, and at a fixed rate determined upon in advance, it would be impossible to meet any of the emergencies which from time to time arise. If, for instance, in 1846 the legislature had fixed three-quarters of one per cent. as the taxes which should be paid by all taxpayers, as it did fix the taxes to be paid by the chartered railroad companies, there would have been no way to provide for the increase of taxes which has since occurred.

Under the special charters specific taxes were placed in 1846 at three-quarters of one per cent. upon the capital stock paid in and such moneys as were realized from used loans in the construction of railroads. This rate of taxation was made to commence in 1851. It will be noticed while this rate was fixed as a specific tax it was fixed upon the value of the property and not upon earnings.

\* \* \* \* \*

During this period the percentage of taxes of the ordinary tax payer increased with great rapidity.

### Express Companies.

In my message of May 6, 1897, I called your attention to the operation of the present laws with reference to express companies, and pointed out to you that under the laws as they then existed we collected from express companies in the State, as one per cent. on gross earnings, in 1895, \$2,742.34, and in 1896, \$2,563.36. In the neighboring State of Indiana the property of these companies was assessed in 1895 for \$1,330,676.00. Indiana had at that time 1,336 less miles of railroad than Michigan. The business of express companies is largely dependent upon the railroads, so that it is safe to say that with our excessive mileage and excessive commerce the business done in this State must be at least equal to the business done in the State of Indiana.

If the express companies of this State had been assessed at the same amount as in Indiana, their taxes would have been, in 1895, \$37,258.93 instead of \$2,742.34. This is computed at the average rate of taxation as fixed by the board of review for that year.

\* \* \* \* \*

### Values, Not Earnings, Should be Assessed.

There is but one rule consistent with honesty and that is to place all the property of the State upon the same footing and to make every one pay his share and to ask no one to pay more than his

share. No one should ask the railroads, express companies telegraph and telephone companies to do more than they insist upon others doing. We should not be satisfied with less. We should bear in mind that we are only representatives, in passing laws that affect the interests of our constituents and the interests of unborn men and women who are to come after us. Our constituents have a right to demand a substantial and *bona fide* effort to equalize taxes and to make every one pay his just share.

### Distribution of Taxes.

The taxes paid by railroad companies, express companies, telegraph and telephone companies under the present system are devoted to the primary school fund. I respectfully recommend to you that the taxes to be collected under any act which you may pass be devoted to the same purpose, and be paid direct to the school districts of the State in proportion to the number of school children. \* \* \*

I recommend that you authorize the appointment of a State board of five, to be non-partisan if the constitution permits, which shall be empowered to make a just and equitable valuation of the franchises and other property of railroad companies, express companies, telegraph and telephone companies at their true cash value, and to ascertain the average rate of taxes paid by the other people of the State for State, county and municipal purposes, and to assess the property of these companies at that rate, the moneys collected to be paid directly to the State treasurer and by him distributed in the same manner as the moneys now collected from specific taxes."

From Message, Regular Session, 1899.

"The average rate of taxation for all purposes in this State exclusive of the special improvement tax, is not far from two and one-half per cent. on the dollar. The most careful research that can be made develops the fact that the rate paid by the corporation that are now taxed on their earnings or income is about six-tenths of one per cent. In other words, individual property pays \$25.00 upon \$1,000.00 of valuation while the property of those quasi-corporations pays \$6.00 upon \$1,000.00 of actual value.

A continuation of this inequality is wholly inconsistent with the faithful discharge of our duty to the public.

There is no reason why the land, buildings and other property of these corporations should be more sacred in our eyes, or should receive more favor at our hands, than the land, buildings and other property of a citizen. The question whether railroad business is profitable, has nothing whatever to do with the mode of taxing it. The income or profit of a railroad company would have to do with the fixing of the value of the property, but not with the system of taxation. A vacant store or dwelling is not as profitable as one rented and producing an income, but could we by any argument,

show that a building should pay a tax upon its earnings, because its location was unfavorable and the investment not profitable?"

"In order to accomplish the object above stated—that of devoting the taxes derived from these corporations to the primary school fund—it was deemed necessary to assess and levy the taxes against this class of property by means of a State board, created for that and other purposes, and to have the taxes when levied paid directly into the State treasury. This method is simple and comparatively inexpensive and cannot be complained of for any good reason. It is the method of the Atkinson bill, so-called, and in that form has received an endorsement of the people of this State. This board should be composed of experts, well equipped by experience and ability to place a proper value upon the property within its jurisdiction. It is neither necessary nor advisable to provide cumbersome or technical machinery for the accomplishment of the desired end. I therefore recommend to you the creation of a State board whose business it shall be to determine the value of this and other property  
523 of quasi-public corporations and to levy an assessment thereon, and that the tax so levied shall be paid into the primary school fund under the provisions of the act.

The argument has been presented in certain quarters that an inequality exists in the assessment and taxation of other properties than those above mentioned. Granting this to be true, it does not affect the merits of the plan proposed. It simply casts upon you another duty—that of readjusting the assessment laws of the State, in order that all property within the State shall be placed upon the assessment roll at its true value."

"Let us, in dealing with this question, do that which our conscience dictates as equity and justice. Let us do justice to the railroad companies and to the individual tax payer. Let us not demand from railroad corporations more than we exact from individual property. Let us evolve a system of taxation that will be just to all alike. We should not ask from corporate property more than is its due."

From Proclamation Convening Legislature in Special Session December, 1899.

(Mr. BUTTERFIELD: Same objection.

Mr. WYKES: After referring to the constitutional provisions referred to in the previous proclamation, session of March 18, 1898, the proclamation continues:)

"In violation of the spirit, if not the letter, of these provisions of the Constitution, laws have been passed from time to time by which railroad companies, express companies, telegraph and telephone companies now owning, according to their sworn returns, at least one-third of the property of this State are required to pay only about one-twenty-sixth of the taxes levied for State, county and municipal

purposes; leaving their just proportion of supporting our schools, asylums and other public institutions, and defraying the public ex-

524      expenses, to fall upon the farmers, laborers, manufacturers and other property owners of the State.

Realizing this condition of affairs, the people of the State almost with one voice demanded the enactment of a law, or laws, which should compel all persons to pay their just proportion of taxes.

In recognition of this demand, the fortieth legislature enacted two laws. One of these was an act to provide for the assessment and levy of taxes upon the property of railroad, express, telegraph and telephone companies, known as the 'Atkinson law.' The other is an act amending the general tax laws by creating a board of State tax commissioners, with supervisory control of tax officers, empowered to review and correct assessment rolls, and with other powers. It is generally known as the "Oren law."

On April 26 last, the supreme court of Michigan rendered a decision in the cases known as the 'telephone cases' which practically invalidated the 'Atkinson law.' Because of that decision, an amendment to the constitution of Michigan is imperatively necessary, before laws can be enacted, providing for the equal taxation of all property.

In order to so amend the constitution, the legislature must pass a joint resolution providing for the submission of the amendment to the people at the next spring or autumn election."

From Message to Same Session.

(Mr. BUTTERFIELD: The same objection.)

"It is unnecessary for me, in this message, to discuss at length the existing inequalities of taxation, or to point out the classes of corporations which escape the payment of their just proportion of taxes, or the unfairness and inequality of the theory of specific taxation upon gross earnings, as at present applied.

525      This subject has been thoroughly and exhaustively debated by you already.

The arguments and opinions, which I have from time to time advanced, are contained in my messages to the legislature of 1897 in regular session, to the same legislature in special session in 1898, and to the legislature of 1899.

There is nothing new in the recommendation that corporate property paying specific taxes be assessed and taxed upon its cash value. \* \* \*

You will recall that during the last session of your body the supreme court indicated that the Atkinson act was unconstitutional. Accordingly a joint resolution, providing for the submission to the people of an amendment to the constitution under which laws could be enacted taxing railroads and other corporate property upon its value, instead of specifically upon gross earnings, was framed. \* \* \*



I am aware that there are members of both branches of the legislature who believe that corporations, now paying specific taxes upon earnings, should not be taxed upon the assessed value of their property. This belief may be due to differing causes. I believe, however, if they will lay aside their personal convictions in the matter, and be guided by the expressed wishes of their constituents, the joint resolution will be passed by both house and senate.

The campaign for taxation of railroad and other corporate property upon its value and for equal taxation generally has been continuously conducted for the past three years. By convention and party pledges, and by majorities, the significance of which no one can dispute, the people of Michigan have plainly indicated their opinion and wish in the matter.

By a plurality of 83,409 for governor in the fall of 1896, a presidential campaign, and of 75,097 in the fall of 1898, the people  
526 declared with an emphasis which cannot be gainsaid that specific taxes on earnings of railroad and certain other corporate property should be abolished and all property treated alike upon its actual cash value. These splendid majorities were not given to me personally but were the verdict of the people for equal taxation.

The platform of the Republican party of 1898, to which nearly all of you owe allegiance, declared as follows: 'We commend the present State administration for its earnest efforts in favor of the equal and just taxation of the property of railroad, telegraph, telephone and express companies. We favor the immediate repeal of the tax upon the gross earnings of railroad companies and favor a tax to be levied upon the true value of railroad, telegraph, telephone and express companies' property, this value to be determined by a State board. The taxes collected therefrom shall be paid into the primary school fund. We endorse the principles of the Atkinson bill and pledge the support of the Republican party thereto.'

\* \* \* \* \*

Taxation of railroad and other visible corporate property upon its cash value is equitable and right as a principle. It should be considered and debated only as a matter of principle. It is the only way to bring about equal taxation.

It is claimed by those who have been demanding taxation upon value that corporations now paying specific taxes on earnings have been contributing less to the support of the burdens of government than they would if paying taxes upon value the same as all others. \* \* \*

Equal taxation is a matter of principle, and there is no justice or equity in taxing one class of property specifically upon its earnings and another class upon its value, when the property belonging to both classes can be seen and appraised and assessed at its actual cash value.



527 You have been censured for increasing taxes by the appropriations passed at the last session. Without discussing the justice of such censure, it must be plain to you that railroads and other corporations, paying specific taxes, pay no part of that increase. The rate of their taxes is fixed. As the burdens of supporting the Government grow, they contribute nothing to the increased expense. For illustration, railroads now pay no share of extra taxation made necessary by the recent war.

It is also well for you to remember that there are only three States in the Union in which railroads pay specific taxes upon gross earnings."

From Proclamation Convening Special Session, October, 1900.

"An extraordinary condition and one which requires the immediate application of a remedy by the legislature, exists in this State relating to the subject of taxation. Executive messages, commencing with Governor Bagley's in 1877, have voiced the complaints of the people concerning inequality, irregularity and injustice in taxation. They have arisen largely from the unjust discrimination in favor of certain corporate property and its owners. \* \* \*

The decision of the supreme court of this State upon the principle involved in the Atkinson bill makes it necessary to amend the constitution before all property can be taxed at its true value. It is therefore necessary to adopt an amendment to the constitution so that property now paying specific taxes upon earnings can be taxed at its true cash value. This should be done not only in the interest of uniformity, but of justice. It is no longer seriously denied that corporations paying specific taxes on earnings are not now and have not heretofore borne their just share of the public burdens.

During times of panic and business depression, corporations taxed upon earnings, such as railroads, pay less taxes than during more prosperous times when their earnings are greater. Consequently other property even during hard times, when such property is least productive, must pay higher taxes for the very reason that railroads pay less. When the necessities of State institutions demand an increase in taxes, corporations taxed on earnings pay no part of the increase, and therefore all other property pays not only its share of the increase, but also the share of the railroads and other corporations, which pay taxes on earnings.

The people can be trusted to vote upon a constitutional amendment, which shall make it possible to pass a proper tax law. They should be given the opportunity denied them by the legislature at its regular session in 1899 and the special session of the same year. There is no good reason why action should be delayed. If this amendment is not submitted to the people at the general election to be held November 6, 1900, railroads and other corporations, now

paying specific taxes upon earnings, will continue to be so taxed under the present system until at least 1903.

\* \* \* \* \*

Acting under authority of section 7 of article 5 of the constitution of the State of Michigan, I hereby call the legislature of the State of Michigan, to meet in extraordinary session on Wednesday, the tenth day of October, A. D. 1900, at twelve o'clock, noon, of that day, to consider the question of the submission of an amendment or amendments to the constitution which will permit the enactment of laws that will provide for the equal taxation of all property, by an assessment of the same at its cash value and for the purpose of repealing or amending the special charters of railroads and other companies."

#### From Message to Same Session.

"Under our constitution, as construed by the supreme court of Michigan, it is practically impossible to frame a law by which property of railroad, telegraph, telephone and express companies can be taxed upon its true value, unless we resort to local taxation. This latter method would deprive so many school districts of  
529 necessary revenue that it would be a most serious blow to our school system."

"Some of the principal arguments against specific taxation upon earnings and in support of taxation upon actual cash value are as follows:

1. That the policy of taxing railroads and similar corporations by a specific tax originated when the State was new, when it was thought necessary to favor the promotion of improved methods of transportation and communication. This reason no longer exists. Specific taxation was regarded at that time as a partial exemption from taxation. It can no longer be seriously contended, however, that the richest corporations in the State should be any longer favored with these special privileges.

2. It was at one time urged by the railroads that their property is in a sense, public property, being devoted to the public use, and therefore should be relieved in part, if not entirely from taxation. \* \* \*

3. That under the system of taxing upon earnings, the State is entirely at the mercy of these corporations. It is compelled to take such reports of earnings as are made to it by railroads and similar corporations which are taxed upon earnings. It is impossible to verify such reports. Again, a large part of the earnings of the railroads comes from 'through' or interstate business. \* \* \*

4. That as I have already stated in a prior message to the legislature, during the period from 1855 to 1895, the rate of taxation for State purposes increased from six cents per capita to \$1.34 per capita. During the same period, the proportion of taxes for State purposes

paid by the railroad companies decreased from 72 per cent. in 1855 to 21 7/10 per cent. in 1895.

5. That the State during the early period of railroad development encouraged the railroads by making them gifts of property and granting them valuable privileges in the shape of exemption from taxation. It ill becomes them now when they are so wealthy and prosperous to resist the efforts of the people of the State to place them on the same footing as to taxation with all other corporations and persons. \* \* \*

6. That is not equal taxation to tax these corporations less as their income decreases. During times of panic, corporations taxed upon earnings, such as railroads, pay less than during more prosperous times when their earnings are greater. Consequently other property, even during hard times when such property is less productive, must pay higher taxes for the very reason that the railroads pay less. \* \* \*

7. That it is unquestionably true that these corporations under the present system of taxation upon earnings, do not pay as much taxes as they would if taxed upon the actual value of their property. That is but another way of stating that they are escaping their share of taxes. I have, however, maintained that it makes no difference whether railroads under the present system of taxation upon earnings have been paying more or less than their proper share of taxes; the system is radically wrong. It is not uniform. I think, as I have already stated, that these corporations should be taxed upon value whether they have in the past been paying too much or too little under the system of taxing upon earnings.

It has been assigned as a reason for voting against measures providing for taxation upon cash value, the fact that no valuation has been made of railroad, telegraph, telephone and express companies' property, and that therefore it could not be said with any degree of certainty that these corporations are not under the present system paying their share of taxes."

531 From Proclamation Convening Legislature in Special Session in December, 1900.

"Under the constitution as so amended, it is now possible to enact a law providing for the assessment and taxation at its cash value of the property of railroad, telegraph, telephone and express companies, and similar corporations now paying specific taxes upon gross earnings.

The amendments to the constitution which make it possible to enact such a law, were ratified and approved by a majority so overwhelming as to leave absolutely no ground for doubt or dispute as to the wish of the people in this matter. \* \* \*

It should be remembered also that the present legislature at its regular session enacted a law, known as the 'Atkinson bill,' providing for the assessment and taxation of certain corporate property

upon its cash value. This is the law which the supreme court of the State indicated was unconstitutional. Its unconstitutionality is what led the legislature to submit the constitutional amendments to the people at the recent general election, so that the law, when enacted, would be valid. There is no reason to suppose that the members of the legislature have changed their minds upon this important question, nor is there any reason why they should. On the contrary, all of the evidence and facts submitted by the State tax commission as a result of its expert valuation of the property of railroad and other corporations paying specific taxes upon earnings, prove beyond contradiction that these corporations have not been paying their share of taxes and that the proposed change in the system of taxation from earnings to cash value as a basis, is entirely warranted and justified by these facts. The work to be performed by the present legislature is, therefore, namely: the re-enacting of a measure along the lines of the 'Atkinson bill.' It should be given an opportunity to again redeem the pledges upon which its members were elected."

532

From the Message to the Same Session.

"I have in the proclamation calling you together in special session at this time, discussed the reasons for so doing. It is not necessary, therefore, for me to repeat them in full in this communication. It is sufficient to say that you are more familiar than the next legislature with the subject which you are to consider; that, therefore, the debate need only relate to the provisions of the law; that you are personally acquainted with the wishes of the people upon this subject; that you passed the Atkinson bill, and your work at this special session is merely the re-enactment of the law with such changes as may be deemed advisable." \* \* \*

"This subject of the taxation of the property of corporations now paying specific tax upon earnings is, as I have said in a previous message, one which has been most thoroughly discussed not only in executive messages and in the legislature but before the people as well. It is now generally understood that, under the present plan of taxation upon earnings, the railroad is its own assessor, and it is practically impossible for the State to know whether it is receiving all of the taxes due it. The average tax payer, too, feels that he is discriminated against when, under the present law, the railroad pays less taxes in hard times when its earnings are less, while he pays a larger tax as a result of the reduction of the railroad tax.

Beyond all this, there is no escape from the fact that there can not be equality of taxation with one form of property paying taxes according to one system, and the rest of the property of the State paying taxes according to another system. It is this which the people do not relish. They believe that if their property is assessed at its cash value and taxed accordingly, that the property of railroads and all other corporations should be taxed in the same manner. \* \* \*

533 In your regular session, by enacting the Atkinson law, you decided that railroad and certain other corporate property should be assessed at its actual cash value. The people at the recent general election made it clear beyond a dispute that you were right and acting according to their wishes in doing so. It must be admitted therefore that the principle being settled, the method of determining the actual cash value of railroad property is not one for the legislature to fix."

From Message, Governor Pingree, the Retiring Governor, to Regular Session of 1901.

"Accordingly, during the regular session of the thirty-ninth legislature which convened in January, 1897, the 'Atkinson bill' was first introduced. It provided for assessment by a State board of assessors of the property of railroad, telegraph, telephone and express companies, at actual cash value. From that day to this, the bill has been fought and its progress stubbornly contested by the corporations affected by it with all of the agencies and methods which it is customary for such corporations to use. \* \* \*

On March 22, 1898, I convened the 39th legislature in special session for the purpose of enacting a law providing for ad valorem taxation of the property of railroad, telegraph, telephone and express companies. Again the 'Atkinson bill' was passed by the house and again it was defeated in the senate.

Equal taxation was the principal issue during the fall campaign of 1898 and a legislature was elected with all of its members pledged absolutely to the enactment of the 'Atkinson bill.' In spite of this a considerable number of members in both houses violated their pledges by employing filibustering tactics against the bill. It finally passed the house by an overwhelming majority. Action upon it was delayed in the senate until just before the spring State election. Fearing the effect of the failure to pass the bill upon the chances of the Republican party's nominees, the senate passed it.

534 The constitutionality of the measure having been questioned, I caused a test case to be instituted in the State supreme court upon the existing telephone tax law, which was identical in principle, with the Atkinson bill, so that if defective the defects could be cured before the adjournment of the legislature. The Atkinson bill was declared unconstitutional by the court on April 26, 1899. An effort was at once made to prepare a law upon substantially the same principle of ad valorem assessment as the Atkinson bill, but it was found impracticable to do so under the decision of the supreme court. \* \* \*

Volumes have been written in support of the principle that the property of railroad, telegraph, telephone and express companies should be taxed upon its assessment at actual cash value by a State board of assessors, and at the average rate of all taxes in the State.

Only one argument has been brought forward against this proposition. That argument is that the present plan of taxing railroads at a specific rate upon gross earnings is just and equitable and that there is no reason why these companies should be taxed upon assessment at their actual cash value, in the absence of any reliable data showing that under the present system they are not paying the same relative share of taxes in the State as other companies and individuals.

I have always contended that whether they are paying their share or not, the property of these companies should be taxed the same as other property is taxed; namely, upon assessment at its cash value, and that until this was done it would be impossible to accomplish equal taxation of all the property in the State. But subsequent developments have proved beyond question that the contention of the railroads is untrue. They are not paying their share of taxes under the present law providing for specific tax on gross earnings."

From Message of Governor Bliss, Incoming Governor, to Legislature of 1901, Regular Session.

535 "Believing that the people desire that all property now paying specific taxes shall be assessed in like manner with other property, I recommend that the legislature provide the necessary machinery for the assessment and collection of taxes on this property upon an ad valorem basis. There should be no hasty consideration of this important question, however, for the interest of hundreds of millions of property is no slight one. It is not necessary to rehearse the steps that have been taken in legislation of this kind, for the duty devolving upon us is plain. \* \* \*

Should there be an increased taxation of all the classes of property now paying specific taxes, the condition above stated would be made worse instead of better and there will be no relief for the inequality now prevailing; the hands of the legislature being tied just as firmly as before.

Why will it not be better to set aside a per capita income for the primary school fund, devoting the excess of the taxes collected from the so-called 'specific tax properties' to the general fund and thereby relieve the property which alone contributes to the general fund at this time.

If this proposition meets the view of the legislature, a constitutional amendment should be submitted limiting the amount the State is required to pay to the primary schools to some certain portion of the tax collected from the corporations now paying specific taxes, the remainder to be covered into the general fund of the State."

536 CLARENCE J. MEARS, being called as a witness on behalf of the defendant, and being first fully sworn by the examiner to tell the truth, the whole truth and nothing but the truth, testified as follows :

Direct examination by Mr. WYKES :

Q. Where do you reside ?

A. Lansing.

Q. Are you employed in one of the State departments ?

A. I am.

Q. In which one ?

A. In the department of state.

Q. In what capacity ?

A. I am clerk of the corporation division.

Q. In your position in that department are you familiar with the records relating to corporations ?

A. I am.

Q. Can you tell from them under what law a particular corporation is organized ?

A. I can.

Q. And the period at which organized and the time at which organized ?

A. Yes sir.

Q. Have you made an examination to determine when the Michigan Central Railroad Company was re-organized ?

Mr. BUTTERFIELD : I object to that.

A. I have.

Q. Have you found the original articles filed on re-organization ?

A. I have.

Q. Have you them with you ?

A. I have.

537 Q. Do they indicate the time at which they were filed—is it indicated upon them ?

A. Yes sir.

Q. Give us the date please ?

A. December 30th 1901, they were filed in the office of the secretary of state.

Q. Does the paper which you hold in your hand indicate that that is the original certificate ?

A. Yes sir.

Q. Does that indicate the law under which the re-organization was had ?

A. It gives the title of the act.

Q. Read the certificate in full ?

A. " Michigan Central Railroad Company.



DETROIT, MICH., December 4th, 1901.

We, Henry B. Ledyard and Edwin D. Worcester, being respectively the president and secretary of the Michigan Central Railroad Company, and respectively the chairman and secretary of the meeting of the stockholders thereof, hereinbelow described, do hereby certify that a meeting of its stockholders duly called, was held this day at the office of the said company in the city of Detroit, in accordance with the provisions of section three, of article one, of an act entitled 'An act to revise the laws providing for the incorporation of railroad, bridge and tunnel companies, and to regulate the running and management and to fix the duties and liabilities of rail-  
538 roads, bridge, tunnel and other corporations owning or operating any railroad, bridge or tunnel within this State, being section 6225 of the compiled laws of 1897.' That there were present at such meeting in person or represented by proxy, the holders of 176,837 shares of stock, being more than two thirds in interest of the shares of the capital stock of the said company.

That on motion of De Witt W. Purdee, seconded by Edward D. Hollister, the following preamble and resolution were passed, by the unanimous vote of the stock so present and represented, to-wit:

"Whereas, by an act approved October 15th 1900, the legislature of this State has repealed the charter of this company, to-wit: Act 42 of the session laws of 1846; such repeal to be enforced from and after the 31st day of December 1901, and

Whereas in and by said act repealing said charter, it is provided that the right of this company to institute proceedings against the State for the determination of the damage which this company may sustain by reason of said repeal, is reserved to it, and

Second, that the right of this company to receive compensation from the State on account of the repeal of such charter, shall not be prejudiced by the voluntary surrender of its charter and re-organization, prior to said 31st day of December 1901, under the provisions of section 6225 of the compiled laws of 1897.

Now therefore, resolved, that this company accepts such permission to so surrender its charter and reorganize without  
539 prejudice, and hereby surrenders its said charter, and coincidentally therewith, reincorporates under the act of the legislature of the State of Michigan, entitled, 'An act to revise the laws providing for the incorporation of railroad, bridge and tunnel companies, and to regulate the running and management and to fix the duties and liabilities of all railroad, bridge, tunnel and other corporations, owning or operating any railroad, bridge or tunnel within this State:'

That the name of the corporation hereby organized shall be 'The Michigan Central Railroad Company;' that the time of its existence shall be 999 years; that its capital stock shall be \$18,738,000.; that the total number of shares of its capital stock shall be 187,380. of

\$100. each, being the total amount of stock held by the holders of the corporation whose charter is hereby surrendered; that the certificates of stock of the former, The Michigan Central Railroad Company, now outstanding, shall be deemed and taken to be certificates of stock of the corporation hereby organized, until surrender thereof, and the issue of new certificates in their stead; that the number of directors of the corporation hereby organized shall be nine, and the following persons shall act as such directors until the first annual meeting of the new corporation, whose first annual meeting shall be held on the first Thursday following the first Wednesday in May in the year 1902, and thereafter upon the same day in each year, unless the directors of such new corporation shall fix a different date, not later in the year than the date named.

William K. Vanderbilt, New York city.

540 Frederick W. Vanderbilt, New York city.

Chauncey M. Depew, New York city.

Henry B. Ledyard, Detroit, Michigan.

Edwin Hollister, New York city.

Samuel F. Barger, New York city.

Hamilton McK. Twombly, New York city.

Ashley Pond, Detroit, Michigan.

Frederick S. Winston, Chicago, Illinois.

Now, therefore, that the said Henry B. Ledyard, president, and Edwin D. Hollister, secretary, as aforesaid, of the said Michigan Central Railroad Company, heretofore existing under said special charter, hereby declare that in accordance with said preamble and resolution, said company has surrendered its charter and reincorporated under an act of the legislature of the State of Michigan, entitled An act to revise the law providing for the incorporation of railroad, bridge, and tunnel companies, and to regulate the running and management and to fix the duties and liabilities of all railroad, bridge, tunnel and other corporations, owning or operating any railroad, bridge or tunnel, within this State.

In witness whereof, we have signed this certificate as president and secretary respectively of the said first mentioned company and have hereunto affixed its corporate seal at Detroit aforesaid the date and year first above written.

HENRY B. LEDYARD, President.

E. D. HOLLISTER, Secretary.

[Seal of the Company.]

Q. Read the endorsements?

541 A. "Michigan Central Railroad Company. Surrender of charter and reorganization, filed December 30th 1901. C. S. Pierce, deputy secretary of State."

Q. Have you made a search of the records of the secretary of state's office for the articles of the Sault Ste. Marie Bridge Company?

A. I have.

Q. You have the articles with you?

A. I have.

Q. Can you tell me by reference to those articles under what law this corporation is organized?

A. The Sault Ste. Marie Bridge Company as it exists under the present organization, is a consolidation; I think I can give you the act under which the two companies were consolidated.

Q. A consolidation of what?

A. Of the Sault Ste. Marie Bridge Company, a corporation organized and existing under the laws of the State of Michigan and the United States of America, and the Sault Ste. Marie Bridge Company a corporation organized and existing under an act of the Dominion of Canada.

Q. Can you find a reference to the act there under which it is incorporated, under which the consolidation took place—You have previously made an examination to find out what law it was organized under, haven't you?

A. I have not.

Q. If you find any language in the articles of consolidation that refer to the statutes under which they are consolidated, read it?

A. "Whereas, it is considered by the respective boards of directors to be for the mutual advantage of the two corporations,  
542 to consolidate and amalgamate their stock, property, and franchise together and under one corporation, for which power and authority are fully granted by the respective statutes under which they have corporate existence as aforesaid."

Q. Have you the original articles of the Sault Ste. Marie Bridge Company, as it existed prior to the consolidation?

A. I have.

Q. Examine them please and see whether there is a statement of the statute under which it was organized; do you find such a statement?

A. There is the statement for which they are incorporated, but it does not specifically mention the act; it says "for the purpose."

Q. Read the statement you find?

A. "The undersigned persons being desirous of organizing themselves into a corporation for the purpose of constructing, operating and maintaining a railroad bridge, hereby make and declare articles of association as follows, to-wit: "

Q. Let me ask you under what law were these articles accepted by the secretary of state?

A. Under the general railroad law.

Q. You found them entered in the books in which the articles filed under the general railroad law are entered?

A. Yes sir, they are indexed with the railroads.

Q. Let me ask you if you have made a search for the articles of the St. Clair Tunnel Company?

A. I have.

Q. You have them with you?

A. I have.

Q. Examine them please and see if you can ascertain under what law the tunnel company was organized?

A. This is also a consolidation.

Q. Examine it and see if the consolidated articles state the law under which the organization took place—were those articles received by the secretary of state under the general railroad law?

A. They were.

Q. You found them entered and recorded with the articles of the railroad company?

A. I did.

Q. Have you made an examination to determine under what law the Toledo & Monroe Railway Company was organized?

A. Yes sir.

Q. Can you tell us under what law?

A. The company is organized under the general railroad law.

Q. Have you made an examination to determine the law under which the Rapid Railroad Company was organized?

A. I have.

Q. Can you tell us what law?

A. It is organized under the general railroad law.

Q. Have you made an examination to determine whether the Lansing & St. Johns railroad is organized under the general railroad law?

A. I don't think it is. The Lansing & St. Johns you refer to.

Q. Give us the proper name, I mean the electric road from Lansing to St. Johns?

A. The Michigan Suburban.

Q. Have you made an examination to determine about that?

A. Yes, sir, it is organized under the general railroad law.

Mr. WYKES: That is all.

Mr. BUTTERFIELD: No cross-examination.

544 CLARENCE MEARS being recalled as a witness on behalf of the defendant, testified as follows:

Redirect examination by Mr. WYKES:

Q. You are still employed in the office of the secretary of state?

A. Yes, sir.

Q. And in the corporation division?

A. Yes, sir.

Q. I hand you the report of the board of State tax commissioners for 1900, and call your attention to the table of purported unincorporated roads found on page 182, and ask you if you have made an investigation to determine whether certain of the roads appearing there are incorporated?

A. Under the general railway act?

Q. Under any law—have you made any investigation to determine whether some of them are incorporated?

A. Yes, sir.

Q. This examination was made in the office of the secretary of state?

A. Yes, sir.

Q. And you have with you the original list of the corporations that was filed?

A. Yes, sir.

Q. Give us from that list those of the railroads enumerated which you find are incorporated under the general railroad law?

Mr. BUTTERFIELD: I object to it unless it appears that it was so at the time this report was made.

Q. Give us at the same time the date of the incorporation?

545 A. I find that the Port Huron Southern Railroad Company was incorporated by filing articles of association in the office of the secretary of state on January 25th, 1900.

Q. Take the next one?

A. I also find that the Sault Ste. Marie Terminal Railroad Company was incorporated by filing articles of incorporation in the secretary of state's office on October 18, 1901.

Q. Under the general railroad law?

A. Yes, sir.

Mr. BUTTERFIELD: I object to it and move to strike it out as immaterial.

A. (Continuing:) The East Jordan & Southern Railroad Company, incorporated under the general railroad law by filing articles of association in the office of the secretary of state July 9th, 1901.

Mr. BUTTERFIELD: That is objected to for the same reason, and we make the same motion.

A. (Continuing:) The Dead River Railroad Company was incorporated under the general railroad law by filing articles of association in the secretary of state's office on November 11th, 1889.

The Paw Paw Railroad Company, incorporated under the general railroad law, by filing articles of association in the secretary of state's office on September 16, 1857. I think that is all that I find in that list that is incorporated under the general railroad law.

Q. Do you find that the Hancock & Calumet Railroad Company is organized under the general railway law?

A. It is.

546 Q. And was in 1900?

A. Incorporated January 14, 1885.

Q. Let me ask you the same question about the Mineral Range Railroad Company?

A. I don't know; I didn't look it up.

Q. I hand you the report of the commissioner of railroads for the year 1901 containing a report of the Hancock & Calumet Railway Company, and ask you to read what you find on page 296 of that report relating to the branches of that road.

Mr. BUTTERFIELD: That is objected to as immaterial and incompetent and not the best evidence.

A. "Description of road. Main line in Michigan from Hancock to end of track 26.74 miles. Total length completed, 26.74. Branches: Lake Linden, from Lake Junction to Lake Linden, 2.51. North Tamarack, from Tamarack to North Tamarack line 1.67 miles.

Tamarack Jr., from main line to Tamarack Jr. mine, .66 miles.

Kearsage, from main line to Kearsage line, .65 miles.

Wolverine, from main line to Wolverine mine.

Dollar Bay, from main line to Dollar Bay dock.

Union coal dock, from main line to Union coal dock, Dollar bay."

Q. I ask you to read from page 297 of the same report what appears under the head of proprietary or leased roads operated by this company.

Mr. BUTTERFIELD: The same objection.

A. "Name, description and length of each in Michigan:

547 Trackage rights, Mineral Range railroad from Hancock depot to Lake Superior smelting works.

Allouez Mining Company, from main line to Louis stamp mill.

Mohawk Mining Company, from main line to Mohawk line.

Tamarack-Osceola Mining Company, from main line to Cook's camp.

Tamarack-Osceola Mining Company, from east branch end of track.

This report covers portions of the Hancock & Calumet railroad for a period from January 1st to June 1st, 1901, from which latter date the operations are included in the report of the Mineral Range Railroad Company."

Q. I ask you to read from the same report of the commissioner of railroads from the report of the Mineral Range Railroad Company, as set out in the railroad commissioner's report on page 475 under the head—everything that appears under the head of proprietary or leased roads operated by this company.

Mr. BUTTERFIELD: The same objection.

A. "Name, description, length of each in Michigan.

Hancock & Calumet railroad, trackage rights D. S. S. & A. railway from Houghton to Keewanaw bay.

Tamarack-Osceola Mining Company, from the main line to Cook's camp.

Tamarack-Osceola Mining Company, from east branch to end of track.

Mohawk Mining Company, from main line to Mohawk line.  
Louis Mining Company, from main line to Louis stamp mills."

548 Q. From that same table in the report of the State board of assessors for 1900 give me the names of those railroads which you find incorporated under the train railway act.

Mr. BUTTERFIELD: The same objection.

A. The Detroit Transit railway incorporated under the train railway act.

The Epworth League railway—the name has been changed to the Ludington & Northern Railway Company—incorporated under train railway act.

The Harbor Springs railway, incorporated under the train railway act.

The Mancelona & Northwestern Railway Company, incorporated under the railway act.

Q. Now I ask you to refer to the same table and give me the name of every other purported railway that appears there which is incorporated under any other statute, as appears by the records of the secretary of state's office.

Mr. BUTTERFIELD: That is objected to as incompetent and not the best evidence.

A. The Tamarack & Osceola Copper Manufacturing Company incorporated under the mining law.

The Dollar Bay Land & Improvement Company incorporated under the mining law.

The Allouez Mining Company incorporated under the mining law.

The Stevens Lumber Company incorporated under the manufacturing act.

Q. That is act 232?

549 A. Act 232 of 1885; it is under the provisions now of act 232 of 1903.

The Centennial Mining Company, incorporated under the mining law.

The Nowlin Lumber Company incorporated under the manufacturing act.

The Sagola Lumber Company, incorporated under the manufacturing act.

The Danahar & Melendy Lumber Company, incorporated under the manufacturing act.

The Wisconsin Land & Lumber Company, incorporated under the manufacturing act.

The Mohawk Mining Company, incorporated under the mining act.

The Boyd de Noc Lumber Company, incorporated under the manufacturing act.



The Sparrow & Kroll Lumber Company, incorporated under the manufacturing act.

I think that is all that appears in this list here.

Q. Let me ask you if you find the Alpena, Portland Cement Company to be incorporated from an inspection of the original articles in the secretary of state's office?

A. Yes, sir.

Q. Let me ask you if you find the Atlantic Mining Company to be a corporation by reference to the original articles filed in the secretary of state's office?

A. I do.

Q. Let me ask you if you find the Mitchell Bros. Company to be a corporation?

A. I do.

550 Q. From an inspection of the original records in the secretary of state's office?

A. Yes, sir.

Q. Let me ask you if you find the Mancelona Handle Company to be a corporation as appears from the records in the secretary of state's office?

A. Yes, sir; I find it to be an incorporated company.

Q. Let me ask you the same question about the J. L. Littlefield Lumber Company?

A. I don't find that company.

Q. Let me ask you if you find the Alabaster Company to be incorporated by the records of the secretary of state's office?

A. Yes, sir.

Q. Can you tell me where the records show the principal office of that institution to be?

A. No, I cannot.

Q. Let me ask you if you find the Michigan Buggy Company to be a corporation?

A. I do.

Q. Let me ask you if you find the Coombs Milling Company to be a corporation?

A. I find the William A. Coombs Company to be.

Q. Can you tell me whether you find the Isle Royal Copper Company to be a corporation?

A. Yes, sir; I do.

Q. Under what act?

A. Under the mining act.

Mr. WYKES: That is all.

Mr. BUTTERFIELD: We have no cross examination.

(Hearing here adjourned until Wednesday Feb. 3, 1904, at 2 p. m.)

551 Mr. WYKES: I produce copies duly certified by the secretary of state of the State of Michigan of the articles of incorporation of the following named corporations:

The Alpena Portland Cement Company, shown by the certificate of the secretary of state to be recorded in his office on the 8th day of August 1899, incorporated under the mercantile, manufacturing act.

Mr. BUTTERFIELD: That is objected to as irrelevant.

(Paper referred to marked Exhibit 33 of this date.)

Mr. WYKES: Articles of association of the Sparrow-Kroll Lumber Company, shown by the certificate of the secretary of state to be recorded on the 19th day of April 1895; also recorded under the same act as above, being act 132 of the public acts of 1895, entitled "An act to revise the laws providing for the incorporation of manufacturing companies except such as are limited by act No. 42 of the session laws of 1867, which provides for the incorporation of persons or corporations engaged in the manufacture of salt and mercantile companies, or any union of the two, and fixing duties and liabilities of said corporations."

Mr. BUTTERFIELD: The same objection.

(Paper referred to marked Exhibit 34 of this date.)

Mr. WYKES: Also the articles of association of the Danahar & Melendy Company, shown by the secretary of state's certificate to be recorded in his office on the 28th of July 1876, under the act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, gold, silver or other  
552 ores or minerals, and for other manufacturing purposes, approved February 5, 1853.

Mr. BUTTERFIELD: That is objected to as irrelevant.

Mr. WYKES: Also of the Centennial Mining Company shown to be recorded in the office of the secretary of state on the 1st day of December 1888 under the mining law.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: Also the articles of the North Wisconsin Lumber Company, shown to be recorded in the office of the secretary of state on the 14th day of November 1888 under manufacturing act No. 232 of 1885.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: Also a transcript of the articles of association — ing the corporate existence of the Atlantic Mining Company, recorded in the office of the secretary of state on the 3rd day of April 1902, under the law for the incorporation of mining companies.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: Also a transcript of the articles of association of the Bay de Noc Company, recorded in the office of the secretary of state on the 31st day of August 1881, under the provisions of act 187 of the public acts of 1875.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: Also a transcript of the articles of association of the Western Plaster Company, recorded in the office of the secretary of

state on the 15th of January 1891 under an act to revise the laws providing for the incorporation of manufacturing companies, being act 232 of 1885.

Mr. BUTTERFIELD: The same objection.

553 Mr. WYKES: Also a transcript of the articles of association of the Nowlin Lumber Company, recorded in the office of the secretary of state on the 1st day of August 1896, under the manufacturing act, being act 232 of 1885.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: Also a transcript of the articles of association of the Mitchell Bros. Company, recorded in the office of the secretary of state on the 22nd day of June 1903, under the manufacturing act No. 232 of 1885.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: Also a transcript of the articles of association of the Wisconsin Land & Lumber Company, recorded in the office of the secretary of state on the 5th day of July 1900 under the manufacturing act.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: Also a transcript of the articles of association of the Stevens Lumber Company recorded in the office of the secretary of state on the 19th of January 1901 under the manufacturing act.

Mr. BUTTERFIELD: The same objection.

Mr. WYKES: I also produce certified copy of the articles of association of the Empire Lumber Company duly certified to by the secretary of state of the State of Illinois, showing the company to be a corporation under an act of the State of Illinois, entitled "An act concerning corporations, approved April 18, 1872."

Mr. BUTTERFIELD: The same objection.

554 Mr. WYKES: Also a transcript of the articles of incorporation of the Cobb & Mitchell Company, recorded in the office of the secretary of state on the 26th of May 1899, under the act for the incorporation of manufacturing companies.

Mr. BUTTERFIELD: The same objection.

(Papers referred to marked Exhibits 33 to 48 inclusive.)

Mr. WYKES: I produce a certified copy of the report to the commissioner of railroads for the year ending December 31, 1901 of the Mineral Range Railroad Company, and read from page 22 under heading, "Description of road, the sub-head 'Proprietary or leased roads operated by this company':

1. Name, description and length of each.

Hancock & Calumet railroad.

Trackage rights:

D. S. S. & A. railway from Houghton to Keewanee bay.

Tamarack — Osceola Manufacturing Company, main line to Cook's camp.

Tamarack — Osceola Manufacturing Company, east branch to end of track.

Mohawk Mini-g Company, main line to Mohawk mine.

Allouez Mining Company, main line to Allouez stamp mill."

I also produce a duly certified copy of the annual report of the Hancock & Calumet Railroad Company to the commissioner of railroads for the year ending December 31, 1901, and read from page 24 under the head of "Branches."

"Lake Linden, Lake Junction, Lake Linden.

N. O. Tamarack, Tamarack North Tamarack mine.

555 Tamarack Jr., from main line to Tamarack Jr. mine.

Kearsarge, from main line to Kearsarge mine.

Wolverine, from main line to Wolverine mine.

Dollar bay, from main line to Dollar Bay dock.

Union coal dock, from main line to Union coal dock, Dollar bay."

On page 22 under head of "Proprietary or leased roads operated by this company.

Name, description and length of each.

Trackage rights.

Mineral Range railroad, from Hancock depot to Lake Superior smelting works.

Allouez Mining Company, from main line to Allouez stamp will.

Mohawk Mining Company, from main line to Mohawk mine.

Tamarack & Osceola Mining Company, from main line to Cook's camp.

Tamarack & Osceola Mining Company, from East Branch to end of track.

This report covers operations of Hancock & Calumet Railroad Company for period from January 1st to June 1st, 1900, from which later date the operations are included in the report of the Mineral Range Railroad Company.

Mr. BUTTERFIELD: To which we object on the ground that it is irrelevant.

Mr. WYKES: We move to strike from the record Exhibit F of the bill of complaint so far as it has been introduced in evidence and particularly to the table attached thereto showing 556 valuations and percentages in the several townships, on the ground that such table is not a table required to be prepared by the resolution of the State board of equalization, and that no authority of law existed for its preparation or inclusion in the report of the State board of equalization.

(Hearing here adjourned until Monday January 8, 1904.

557 BRUCE O'DELL a witness produced on the part of the defendant, *who* being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. WYKES:

Q. How old are you?

A. Forty years.

Q. Where do you reside?

A. Cadillac, Michigan.

Q. Are you connected with any business in Cadillac?

A. Yes, sir.

Q. What is it?

A. In the lumber business for Cummer-Diggins & Company.

Q. What connection have you with the Cummer-Diggins Company?

A. Well, it would be rather hard to describe; principally as sales manager.

Q. Do you know whether this company owns and operates a lumber road or not?

A. A lumber road did you say?

Q. Yes, sir?

A. Yes, sir; they do.

Q. State where this road begins and where it ends?

A. Well, it begins at Cadillac and ends at the present time about ten miles northwest of Cadillac, somewhere between eight and ten miles, I don't know just how far it is.

Q. I ask you if you made an affidavit in reference to this road?

A. Yes, sir.

558 Q. I will read the affidavit and you may pay close attention to it and tell me whether it is the one you made?

"STATE OF MICHIGAN, }  
County of Wexford. }

BRUCE O'DELL of Cummer-Diggins & Company deposes and says: That he knows of the existence of a railroad in Wexford county between Cadillac and lumber camps northwest from Cadillac, and the facts in relation thereto hereafter stated. Answers to questions hereafter set forth are within his knowledge, and that he believes the same to be true.

Q. 1. By whom is the road owned?

A. Cummer-Diggins & Company.

Q. 2. Nature of owner, whether a corporation, copartnership or individual? If corporation name the same.

A. A copartnership.

Q. 3. What is the nature of the business carried on over the road?

A. Hauling logs for Cummer-Diggins & Company.

Q. 4. For what purpose was it constructed?

A. Same.

Q. 5. What is to be done with it when its purpose is accomplished?

A. It is the purpose of this company to operate the road as above for twenty years or longer.

Q. 6. Is it designed for purpose of carrying passengers or freight generally?

A. No.

559 Q. 7. Is it used in carrying passengers and freight generally for persons or corporations other than the owner?

A. No.

Q. 8. Are there any instances of the carriage of passengers or freight over this road for persons or corporations other than the owner? If so, give the aggregate amount of revenue derived from the carriage and state period during which earned?

A. No revenue derived from that source.

Q. 9. If any freight was carried for persons other than the owner state whether carried on special contract in each case or upon regular schedule of prices?

A. None carried.

Q. 10. State separately any amount derived from transportation of passengers?

A. None.

Q. 11. Has the road any regular time table or schedule upon which they run?

A. No.

Q. 12. Or is it run simply to suit the convenience of the owners?

A. Run to suit convenience of owners.

Q. 13. Has road a regular schedule of freight tariffs?

A. No.

Q. 14. Or passenger tariffs?

A. No.

Q. 15. If the road has any regular schedule of freight rates or passenger rates, or has done any freight business for other persons or corporations, or carried any passengers, state fully and specifically all the surrounding circumstances, giving detailed statement of income, time during which the business was carried on, expectancy to continue, etc.

A. No schedule.

Q. 16. What is the nature of the road, standard or narrow gauge?

A. Thirty-six inch gauge.

Q. 17. Total length of road, length of main line and length of each branch?

A. Main line ten miles; twenty branches aggregating fifteen miles; branches are changed frequently as circumstances require.

Q. 18. Does it make connection with any other road, and state at what point?

A. No.

Q. 19. Is any traffic carried over it by any railroad company, stating name of the company, if any?

A. No.

Q. 20. Is the road adapted to the carriage of passengers and freight;

that is, taking into consideration the locality and settlements thereon?

A. No.

Q. 21. Are there any settlements on the line of the road, or at either terminal? If so, state fully the facts in relation to same, giving number of inhabitants of each.

A. None except Cadillac.

Q. 23. Give each terminal and state surrounding conditions.

A. Cadillac, and lumber camps in woods.

561 Q. 24. What is approximate cost?

A. Cost of building and operating road has been carried into account for expense of logging. Have no account from which cost of construction could be given even approximately.

Q. 25. What is the value of the road including the equipment, measured by cost of reproduction.

A. Cannot tell for lack of definite information.

Q. 26. What is the value of the road, including equipment used in connection with the business carried on by its owners, taking into consideration all sources of revenue, both from the operation of the road and otherwise?

A. Don't know.

Q. 28. Is the road operated simply as incidental to the lumber, logging and wood business of the company?

A. Yes.

Q. 29. State number of locomotives used?

A. Four.

Q. 30. State number of cars owned and number of each description?

A. 76 No. 2 Russell logging cars, two flat cars, two box cars.

Q. 31. Have you any connection with the Cummer-Diggins & Company? If so, state what?

A. Sales and office manager.

(Signed)

BRUCE O'DELL.

Subscribed and sworn to before me this 12th day of October A. D. 1903.

WALTER F. HODGES,

Notary Public, Wexford County, Michigan.

My commission expires January 7, 1906."

562 Q. Look at the affidavit?

A. The only thing I want to change is the total number of miles of main line and connections. There is more than I thought there was at that time. There is something in the neighborhood of twenty miles instead of fifteen.

Q. Do you mean the branches?

A. Yes, sir.

Q. You have stated twenty?



A. There are twenty branches aggregating a little more than twenty miles; that is approximately correct, the aggregate in the neighborhood of fifteen miles. I don't know that I fully understand the question there "Has it any connection or does it connect with any other road."

Q. That means an ordinary connection—has it a Y that connects with any other road, or is there a crossing with any other road?

A. Well, we have a Y to connect with the Ann Arbor road. For instance, in our yard we have a three rail track, and take one of our 36 inch gauge cars we can run that over there and we can run a standard gauge car out of our yards at Cadillac, and we have a common Y that we switch the cars on to from our tracks for the Ann Arbor to take freight out of our yards.

Q. Is your road the same gauge as the Ann Arbor?

A. No, sir; our road is a 36 inch gauge, and theirs is a standard gauge.

Q. Your cars could not go on to the Ann Arbor tracks?

A. No, sir.

Q. You have what is in the nature of a siding there from the Ann Arbor, and the cars of both companies run on to it.

A. Yes, sir.

563 Q. The facts that are stated there were true at the time that affidavit was made, were they?

A. Yes, sir.

Q. What changes, if any, had there been between the middle of 1901 and the time at which this affidavit was made?

A. There was practically no change that I know of, except that branches of the road were taken up and moved repeatedly as the timber was cut off from the land that they reached.

Q. Did you have more or less line in the middle of 1901?

A. Had less.

Q. How much less?

A. I think in the neighborhood of two miles.

Q. Of main track?

A. O, of main track?

Q. Of main track or siding?

A. Yes, there was in the neighborhood of two miles less of main track.

Q. Any less of the sidings?

A. I think the sidings were about the same.

Q. Now this road, does it run entirely through timber owned by the Cummer-Diggins Company?

A. Well, at the time the road started it run through their timber all the way, yes. Of course part of the timber has been cut off, near to Cadillac; some of the land is now enclosed in farms.

Q. It has been sold by the Cummer-Diggins Company, do you mean for farms?

A. Yes, sir.

Q. About how many of those farms are there along the line?

A. I could not say as to that even approximately. There are probably three farm houses adjacent to the railroad from one end of the line to the other.

Q. How long have you been connected with the Cummer-Diggins Company?

564 A. Since July 10, 1902.

Q. What was your business previous to that time?

A. I was in a similar position with Stillman, Wright & Company at Berlin, Wisconsin.

Q. Where were you located at that time--were you located in Cadillac?

A. When?

Q. Previous to your connection with Cummer-Diggins & Company?

A. No, I was located at Berlin, Wisconsin.

Q. Are there any other logging camps along this line than the Cummer-Diggins camps?

A. There is one adjacent to the Cummer-Diggins camps at the present time; there was not at the time this affidavit was taken.

Q. Where is that, near the terminus?

A. Yes.

Q. Are they at the present time using this line in the carrying of their produce?

A. They are not using it, but we are transporting some logs from that company.

Q. When did you begin?

A. During the present winter, just what time I could not say, it was late in the fall, I should think about November.

Q. Have the Cummer-Diggins people lumbered all of their forests in that neighborhood?

A. No, sir.

Q. They are still logging and carrying down their own products?

A. Yes sir.

Q. Can you tell the amount of logs that you carried for this other company?

A. I can tell approximately, very nearly. Up to the first of January we had hauled for them about 350 cars of logs.

Q. Have you a contract with them for hauling their logs?

565 A. There is a price agreed upon.

Q. A price agreed upon?

A. Yes.

Q. What is it?

A. \$1.50 per day.

Q. What is the length of the haul?

A. I think about eight miles.

Q. Do you know the amount of timber that this other company has in there? Let me ask you first, what is the name of the company that you have been hauling logs for?

A. Murphy & Diggins. Diggins in the firm of Murphy & Dig-

gins is a brother to the Diggins in the firm of Cummer-Diggins Company.

Q. Is that also a copartnership?

A. Yes.

Q. Now can you tell me about how much timber the Murphy & Diggins Company has on this line?

A. I could not only approximately; there is less than a section of land yet that they expect to log from.

Q. Less than a section of land?

A. Yes, that is adjacent to the Cummer & Diggins road as now constructed.

Q. At the rate they are cutting how long before they will finish?

A. I think they expect to finish it next year.

Q. Then do I understand you to say the rest of the timber in that locality is owned by the Cummer-Diggins Company?

A. Well, not all of it, because there are small pieces here and there owned by different individuals.

Q. Is there any amount of it that is owned by persons or companies other than Cummer-Diggins & Company?

A. Well, there is none in large tracts; what the amount would be I couldn't tell, because it would be forty acres here and eighty acres there.

566 Q. Would there be sufficient of it to feed a railroad?

Mr. BUTTERFIELD: That is objected to as incompetent.

Q. To make a railroad a profitable institution, is there sufficient?

Mr. BUTTERFIELD: The same objection.

A. No, there is not enough of it, aside from Cummer-Diggins & Company's holdings to support a railroad.

Q. You said in your affidavit that there were no settlements along the line. Are there any logging camps other than the Cummer & Diggins' camp and the temporary camp of the Murphy & Diggins Company?

A. No sir, not any.

Q. Have you since you made that affidavit made any investigation of the value of this road?

A. I have not.

Q. Can you tell me what it is assessed at?

A. No, sir; I doubt if I know.

Q. And this carrying of logs for the Murphy & Diggins Company, is it the only business for outside parties?

A. It is the only business done for outside parties.

Q. I understand you to say that was done under a special contract?

A. Yes, it is merely a nominal price for carrying, and the contract is influenced very largely because F. A. Diggins of Murphy & Diggins is a brother of the Diggins in the Cummer-Diggins Company.

567 Cross-examination by Mr. BUTTERFIELD:

Q. How many men are there in the Murphy & Diggins camp?

A. That I do not know.

Q. How do they get into camp from Cadillac?

A. I think they do.

Q. How—do they come over the Cummer & Diggins road?

A. I don't think they do; I think most of them go by team.

Q. Those that don't go by team go on the railroad?

A. They might, but as to that I could not say.

Q. You have a caboose, I suppose?

A. No, sir.

Q. No caboose?

A. No sir.

Q. How do the train crew ride, on the locomotive or car?

A. Our train crew rides on the locomotive.

Q. If anybody else rides they would either ride on the locomotive or on the cars?

A. On the flat car. We carry with each train one flat car to carry extra couplings and to carry our supplies to the camps and things of that kind, that is, upon a flat car.

Q. Do you ever carry any supplies to the Murphy & Diggins camp?

A. I don't know if they do or not; they might. If they do there is never any charge made of it. So far as passengers are concerned, if one of the farmers along that line was in town and wanted to ride on our train he would simply climb on and go and nothing would be said about it.

Q. There is not enough of it so you make any charge?

A. We never made any charge for carrying passengers of freight except—

Q. Down at Cadillac your company has a mill, of course.

568 A. Yes, sir.

Q. And the tracks are so arranged that the Ann Arbor railroad engines can come into your yard?

A. Yes, sir.

Q. And they can move their standard gauge cars in your yard?

A. In our yard, yes, sir.

Q. Are the narrow gauge engines so equipped that they can move broad gauge cars?

A. Yes, sir.

Q. You have a coupler on the narrow gauge?

A. Yes, sir, either double coupler or a coupler with a long pin.

Q. A long link and pin?

A. Yes.

Q. Do any of the cars of your company go to any other industry besides your mill?

A. No, sir.

Q. In Cadillac?

A. No, sir.

Q. Do all the logs that are brought down by your railroad go to your mill?

A. Except the few logs that we haul for Murphy & Diggins.

Q. And they go where?

A. They are dumped from our tracks into the lake.

Q. I suppose there would be no objection, would there, to the Cummer & Diggins road hauling logs for any of these persons along the line who own small tracts if they made application?

A. Well, there might not be any objection, but they wouldn't haul their logs for them?

Q. Why not?

A. Because they want to buy their logs.

Q. The reason they wouldn't would be because they would be brought into the market in competition with their own?

A. Yes, sir.

Q. Beyond the terminus of the Cummer & Diggins road  
569 is there some timber that could be reached by extensions, four, five, six or ten miles?

A. Yes, we have timber on beyond our present railroad, as far as ten or twelve miles.

Q. I suppose it is the plan of the firm to extend the road.

A. Extend the road as the timber is cut off.

Q. And I suppose if at some point along the road, near perhaps where the terminus is at present, there should spring up a little village, from some cause or other, and it was found that the presence of that village would be a source of material revenue to your road, that you would adjust yourselves to avail yourself of the revenue, wouldn't you?

A. I couldn't say what the policy of the company would be.

Q. In your experience as a lumberman and manager of lumber business, that would be a prudent thing to do, wouldn't it, provided, I mean, there was enough of it to make it an object.

A. I could tell you if it was my own business that I was handling, but I couldn't tell you what the policy of Cummer-Diggins & Company would be.

Q. If it was your own business what would be prudence, provided you found a town springing up along the line which had business enough to make it a source of material revenue; wouldn't it be prudence to adjust yourself to handle it?

A. If it were a business of my own and I found I could make it profitable to do so, I certainly should do it.

Q. So that I take it that even though it might be the present intention of the Cummer & Diggins firm at the end of twenty years, or after the timber which your firm owns has been exhausted,  
570 to take up the railroad, it is not possible to fully foresee what may happen in twenty years.

A. Certainly not.

Q. And I suppose it is entirely possible that something may hap-

pen that will change the view of the Cummer & Diggins Company as to what would be a prudent thing to do with the road.

Mr. WYKES: I object to all this line of questions as being incompetent.

Q. Is that so?

A. That would be only conjecture on my part.

Q. It would be simply conjecture on anybody's part, but I am simply getting it into the record as a fact that you can foresee today what may be the conditions twenty years from now?

A. No certainly not.

Q. That so far as you know there is no immutable determination on the part of this firm to take up this road at the end of twenty years or any other particular time, regardless of the conditions surrounding it at that time, is there?

A. No, I think not.

Q. In other words, what they do with the road when they exhaust their timber will depend upon conditions surrounding it?

A. Very largely, yes.

Q. Do you know whether the railroad is assessed separately or not in any of the townships through which it runs?

A. I do not know, but I think that it is assessed with the land.

Q. It is all assessed locally, whatever property you have is assessed in the townships?

A. Yes, sir.

571 Q. Does the Cummer & Diggins road reach any other industry in Cadillac except their own mill?

A. No sir.

Q. And all the lumber that is manufactured in the Cummer & Diggins mill goes out over some other railroad?

A. Yes, sir.

Mr. BUTTERFIELD: That is all.

Redirect examination by Mr. WYKES:

Q. Where are the Murphy & Diggins logs manufactured, where do they go to?

A. They are manufactured at Cadillac. Their mill is on the lake opposite the Cummer & Diggins mill.

Mr. WYKES: I move to strike out so much of the testimony of this witness as speculates and comments on the condition which may exist in the future, on the ground that it is immaterial and incompetent.

Mr. BUTTERFIELD: I move to strike out all his testimony, on the same ground.

(Hearing here adjourned until 2 p. m.)

572

## Afternoon's Proceedings.

GEORGE L. LEWIS, a witness produced on the part of the defendant, and being duly sworn by the examiner to tell the truth, the whole truth, and nothing but the truth, testified as follows :

Direct examination by Mr. WYKES :

Q. How old are you ?

A. Thirty-nine.

Q. What is your business ?

A. Mechanical engineer.

Q. How are you at present employed ?

A. I am at present erecting a dredge for the Marion Steam Shovel Company of Marion, Ohio.

Q. Are you under continuous employment with this company ?

A. No,—that is, I am and am not. When I want to attend to any other business, or business for myself, I drop it, just like going home.

Q. Did you assist Prof. Cooley in 1900 in making the appraisal of the railroads, the Michigan railroads ?

A. I did.

Q. In what capacity ?

A. As expert in miscellaneous equipment.

Q. You had charge of the entire inspection of miscellaneous equipment ?

A. Yes, sir.

Q. Prior to your connection with this appraisal what had been your experience which would familiarize yourself with the miscellaneous equipment of a railroad ?

573 A. Directly prior to that I had been with the—

Q. Begin at the beginning of your experience.

A. The beginning of my career do you mean ?

Q. Your experience which would familiarize you with the railroad equipment.

A. Prior to 1883 running stationary engines. In 1883 passed an examination as stationary engineer in Detroit, Michigan, R. G. Ray, inspector; renewed certificate in 1884. Was with the Daniel Scotten tobacco works, Detroit, prior to 1884 in capacity of second engineer; quit of my own accord and returned home to Toledo. I remained home until July 1886, when I went to California, where I followed mechanical engineering, working in the machine shops of H. R. Rice, San Francisco, Daniel Best of San Leandro, and other shops; also engineer in the mines of Thomas Ewing of San Francisco until taken sick, which compelled me to give up the mines; afterwards worked on construction of dredges and ditching machines, it sometimes being necessary to prepare my own designs, make the drawings, specifications, etc. Built and operated one of these machines for the California Bridge Company, general contractors of



San Francisco; could have remained with them longer but quit to return to my home in Toledo in 1889. At no time while in California was I discharged from any work. On the contrary, at various times I was promoted as superintendent of various works. In 1891 worked in the capacity of steam shovel engineer for Drake & Stratton, No. 100 Broadway, New York, John O'Connor, general superintendent. The shovel was located at Millersburg, on the T. W. & S. railroad. Since 574 1892 have been with the Marion Steam Shovel Co. of Marion

Ohio, setting up and starting steam shovels and building and operating barges for them, except about two years and a half in business for myself contracting steam shovel work, having my own shovel. In 1899 built and operated a dredge at St. Petersburg, Russia and remained with the Russian government some time in the capacity as dredge expert. In 1900 had completed and built the hulls and placed the machinery on three dredges in the United States, and have one to build in Honduras, Central America, for the Marion Steam Shovel Company as soon as I can complete the present part of the appraisal that is assigned to me.

Q. How long were you engaged in this appraisal?

A. As near as I can remember, something about like four months.

Q. Since the completion of that work what has been your employment, what have you done, detail it as you did this previous experience?

A. I have been engaged in—you don't want the minute details?

Q. Just as you have given it there, in the same detail you have given it there?

A. After completing the dredge in Honduras I went back to Russia to build a second bridge for the government and remained there about eight months instructing their employees and looking after the work, and remained at home in the neighborhood of about a year, not following the steam shovel business. Then I took charge of some work on the Pennsylvania line in Indiana on a percentage; remained on that work about four months; then went into

575 Missouri to operate a 90-ton steam shovel used in stripping coal. After the work shut down there I began building this dredge that I am now engaged on in Michigan.

Q. You say you had entire charge of the field work of the department of miscellaneous equipment?

A. Yes sir.

Q. In engaging upon that work, when you engaged upon it, were general instructions of the manner in which it should be carried forth, given you?

A. Yes sir.

Q. They were in printed pamphlet?

A. I don't remember, I think they were—yes, they were.

Q. The same instructions that were generally given throughout this work?

A. Yes sir.

Q. You know that to be so?

A. Yes sir.

Q. Now detail for us the method in which you proceeded to acquire information as to the properties, the miscellaneous equipment, where they were situated; detail the method in which you went at the inspection and how you made your reports?

A. In compliance with our instructions I went to the offices of the different railroads to locate that part of the equipment that came under my heading—under the heading of miscellaneous equipment.

Q. Let me ask you to detail what would come under that heading?

A. That is a pretty hard question to answer, with the exception of steam shovels, dredges, derricks, wrecking cars, pile drivers—virtually the odds and ends of railroad equipment.

576 Q. You may proceed with the general method. I interrupted you to ask a question what miscellaneous equipment consisted of, and you were saying you went to the offices or the books and took from them such information as was given.

A. After procuring as much information as possible through the records of the office, that were obtainable at that time—and at the beginning we had some little difficulty in getting at the records, but later on the railroad companies offered us all the facilities that they could—and as I say, after procuring the data as to where the equipment was to be found the kind of equipment, and if possible the cost to the railroad company, I made a personal inspection of the property, taking into consideration the first cost, the general physical condition of the machine, its age, the state of repair—or the physical condition would cover it—the state of repair it was in when I say it and its ability to do work as compared with modern machines. Often times the machine, to a person not experienced, would appear to be of very little value, from the fact that it would be covered with dirt and grease, but at the same time it would be capable of doing 75 to 90% or 95% of the work of a new machine, and these facts, through actual experience in handling machinery, I used in basing the per cent. of value.

Q. You made a full description of each machine you inspected, did you, on your field notes or upon the blank?

Q. Yes, such as giving the number, the shop number—the manufacturer's number and shop number of the railroad company and placing the per cent. of value that it was at that time.

577 Q. You made a full report of everything that you found in the description, with the percentage of depreciation?

A. Yes sir, that is the report as you see it there.

Q. And your reports you will find bound in the office and field notes of the Michigan railroad appraisal?

A. Yes sir.

Q. And all of the sheets which purport to be reports on miscellaneous equipment represent your work?

A. Yes sir.

Q. And did you do any of the office work?

A. Some of it, yes sir.

Q. How were the prices applied—where did you get your prices to apply to the equipment that you found?

A. From the manufacturers, some from the railroads, and some from the dealers.

Q. Where you found on the books the cost price, did you take that?

A. Of the railroads?

Q. Yes?

A. Yes sir.

Q. And where you didn't have that you—

A. Took the manufacturers' or the dealers' price.

Q. You were in the office during the time that the computation on this work were made?

A. Yes sir.

Q. And you assisted in the computation?

A. Yes sir.

Q. Was there any system of checking results to insure accuracy?

A. Yes, I think there was. If I remember rightly one man would compute it and another would check it. I know I checked some of them myself.

Q. The results of your work were tabulated and went into  
578 the tax roll compilation?

A. Yes sir, I believe so.

Q. And appear there as the totals under the head of miscellaneous equipment?

A. Yes sir.

Q. Now, taking your knowledge of equipment of this character, would you say that the result of your work was to place a conservative and fair value upon the property which you found and appraised and examined?

A. According to our instructions, that was done to the best of my ability.

Q. And you think it was a fair conservative value?

A. I do.

Cross-examination by Mr. BUTTERFIELD:

Q. I suppose the cases in which you found the cost price of various articles of miscellaneous equipment on the books of the company, were rare, were they not?

A. Yes, I may say so.

Q. And for the most part your original cost of re-production of the miscellaneous equipment was based upon prices that you obtained through correspondence?

A. Well correspondence and personal inquiry.

Q. Inquiry of whom?

A. Manufacturers and dealers.

Q. Did you ever have any occasion to buy or sell a steam shovel?

A. Yes sir.

Q. Personally?

A. Yes sir.

579 Q. When?

A. I think it was in 1894 that I bought a shovel, a yard and a half shovel from the Marion Steam Shovel Company.

Q. Is that the only time you bought one?

A. Yes, for myself.

Q. Did you ever have occasion to buy for yourself any of these other machines that are classed as miscellaneous equipment, pile drivers or derricks?

A. No sir.

Q. Wrecking cars, construction cars, cantilevers, excavators, and so on?

A. No sir.

Q. So your information as to the cost price of one of those machines was based upon what you learned by inquiry, either by correspondence or otherwise, from dealers, at the time, in the year 1900 when you made the appraisal.

A. Largely, with the exception of steam shovels, pile drivers and wrecking cars.

Q. How did these differ from the others?

A. They compared about the same.

Q. Did you ever buy any, I mean a wrecking car?

A. No sir.

Q. How did you learn the price?

A. From the company's books.

Q. In every case where there was a wrecking car did you find the price the company paid for it?

A. No sir.

Q. How about pile drivers?—you mean you learned that from the company's books in some cases?

A. Company's books or inquiries.

580 Q. You didn't find it in every case did you, on the company's books?

A. No, I can't say I did in every case; sometimes taking the officials' statement that that was their cost, which afterwards I found through the manufacturers checked very near right.

MR. BUTTERFIELD: I move to strike out all the testimony in the record which purports to give valuations of miscellaneous equipment, on the ground that the testimony is incompetent.

Redirect examination :

Q. Do your reports show when you did find the figures giving the purchase price on the books of the company—will your report show that?

A. I can't remember whether they will or not.

Q. Is there any part of the equipment in which you made a complete inventory of everything that entered into it for the purposes of valuation?

A. How is that?

Q. Is there any part of the equipment, any particular kind of equipment, in which you made a complete inventory of everything that entered into the making of it, for instance, in a wrecking car?

A. Yes, the record will show the amount of tools, number of tools and kind of tools that were in the car.

Mr. WYKES: That is all.

581 Mr. O'DELL, being recalled by Mr. WYKES, testified as follows:

Q. Can you tell me what corporation operates the Jennings & Northeastern railroad?

A. Mitchell Bros. & Co. of Cadillac, Michigan.

Q. Do you know whether the Cobb & Mitchell Company, a corporation, operates the Boyne Falls & Northeastern railroad?

A. I know they operate a railroad in that vicinity, whether it is of that name or not, I don't know.

Q. Do you know what one of the termini of that road is?

A. Boyne Falls, it connects there with the C. R. & I.

Recross-examination by Mr. BUTTERFIELD:

Q. What are the termini of the Jennings & Northeastern?

A. One is Jennings and the other goes to their timber.

Q. How large a place is Jennings?

A. I don't know precisely; it is a village I think of about 400.

Q. Is there any other railroad at Jennings?

A. Yes.

Q. The C. R. & I.

A. Yes sir.

Q. Does the Jennings & Northeastern road have a physical connection with the C. R. & I.

Mr. WYKES: We object to this as improper cross-examination.

A. I do not know as to that.

Q. How far is Jennings from Cadillac?

A. It is under 20 miles, I think about 15 miles.

Q. Is the Jennings & Northeastern a standard gauge road?

582 A. Yes, sir.

Q. Do you know whether it carries any freight?

A. I do not.

Q. For people outside of Mitchel Bros.?

A. I don't know.

Mr. WYKES: The same objection.

Q. Do you know whether it carries any passengers or not?

A. No, sir; I do not.

Q. Do you know anything in reference to the Boyne Falls & Northeastern, whether that carries passengers and freight for others or not?

A. No, sir.

Q. How do you know Mitchel Bros. owned the Jennings & Northeastern?

A. In a general way, from talking with men connected with the Mitchel Bros. Company.

Q. It is hearsay I suppose, isn't it?; you haven't any first hand knowledge of your own, all you know is what you have heard somebody say?

A. I have never been on the road, or anything of that kind.

Q. Have you ever had anything to do with the business of the road?

A. No sir.

Q. So you would know Mitchel Bros. owned it?

A. No sir, only as I have heard some of the officials of Mitchel Bros. speak of it, and as generally spoken of in the community where I live—as owning and operating a railroad there.

Q. Do you know whether Mitchel Bros. are a partnership or not?

A. Mitchel Bros. are incorporated.

Q. That is the name?

A. Yes.

Q. The corporate name?

A. Yes sir.

583 Q. Do you know what law they are incorporated under?

A. No sir.

Q. How do you know they are incorporated?

Mr. WYKES: We showed it the other day.

A. Simply from personal talks with the officers of Mitchel Bros. Company and from the advertisement of the corporation in our local papers.

Q. You never saw the articles of association?

A. No sir.

Mr. BUTTERFIELD: That is all. I move to strike out the testimony as to the Jennings & Northeastern and the Boyne Falls railroads, as incompetent.

584 HARRY D. NORRIS, a witness produced on behalf of the defendant, being first duly sworn by said notary, testified as follows:

Direct examination :

- Q. Where do you reside Mr. Norris?  
 585 A. I presently reside at Oakland.  
 Q. Where have you previously resided?  
 A. At Thompson, Schoolcraft count-, Michigan.  
 Q. Do you know of and were you connected with the F. & F. Lumber Company?  
 A. I was superintendent of the F. & F. Lumber Company.  
 Q. Is this company a corporation?  
 A. No, I believe it is a co-partnership, a limited co-partnership.  
 Q. What was the business of the F. & F. Lumber Company?  
 A. They were engaged in the lumber business, in the manufacture and sale of lumber.  
 Q. Where?  
 A. In Michigan.  
 Q. At what place in Michigan?  
 A. Thompson, Michigan.  
 Q. Do you know if this company owned a logging road?  
 A. Yes sir, it did.  
 Q. What was the length of it?  
 A. About 25 or 26 miles. We had one branch connecting Thompson with South Manistique.  
 Q. Did it run on beyond the point where it made the connection?  
 A. No sir. The main line, except through Thompson, ran through timber land.  
 Q. I ask you if you typewrote this affidavit?  
 (Witness is shown affidavit, a copy of which is hereinafter inserted.)

586 A. I believe I did, it looks like my typewriting.

Q. Did you sign and swear to it?

A. Yes sir, that is my signature.

Q. Read the affidavit.

Mr. BUTTERFIELD: I object to the reading of the affidavit, that it is incompetent and immaterial and not the best of evidence.

The following is a copy of the affidavit presented to witness to be read to him:

STATE OF MICHIGAN, }  
 County of Schoolcraft, } ss:

Harry D. Norris of Thompson, Schoolcraft county, Mich. being first duly sworn, deposes and says, that he is the superintendent of



Q. Do you know whether it carries any freight?

A. I do not.

Q. For people outside of Mitchel Bros.?

A. I don't know.

Mr. WYKES: The same objection.

Q. Do you know whether it carries any passengers or not?

A. No, sir; I do not.

Q. Do you know anything in reference to the Boyne Falls & Northeastern, whether that carries passengers and freight for others or not?

A. No, sir.

Q. How do you know Mitchel Bros. owned the Jennings & Northeastern?

A. In a general way, from talking with men connected with the Mitchel Bros. Company.

Q. It is hearsay I suppose, isn't it?; you haven't any first hand knowledge of your own, all you know is what you have heard somebody say?

A. I have never been on the road, or anything of that kind.

Q. Have you ever had anything to do with the business of the road?

A. No sir.

Q. So you would know Mitchel Bros. owned it?

A. No sir, only as I have heard some of the officials of Mitchel Bros. speak of it, and as generally spoken of in the community where I live—as owning and operating a railroad there.

Q. Do you know whether Mitchel Bros. are a partnership or not?

A. Mitchel Bros. are incorporated.

Q. That is the name?

A. Yes.

Q. The corporate name?

A. Yes sir.

583 Q. Do you know what law they are incorporated under?

A. No sir.

Q. How do you know they are incorporated?

Mr. WYKES: We showed it the other day.

A. Simply from personal talks with the officers of Mitchel Bros. Company and from the advertisement of the corporation in our local papers.

Q. You never saw the articles of association?

A. No sir.

Mr. BUTTERFIELD: That is all. I move to strike out the testimony as to the Jennings & Northeastern and the Boyne Falls railroads, as incompetent.

584 HARRY D. NORRIS, a witness produced on behalf of the defendant, being first duly sworn by said notary, testified as follows:

Direct examination :

Q. Where do you reside Mr. Norris?

585 A. I presently reside at Oakland.

Q. Where have you previously resided?

A. At Thompson, Schoolcraft count-, Michigan.

Q. Do you know of and were you connected with the F. & F. Lumber Company.

A. I was superintendent of the F. & F. Lumber Company.

Q. Is this company a corporation?

A. No, I believe it is a co-partnership, a limited co-partnership.

Q. What was the business of the F. & F. Lumber Company?

A. They were engaged in the lumber business, in the manufacture and sale of lumber.

Q. Where?

A. In Michigan.

Q. At what place in Michigan?

A. Thompson, Michigan.

Q. Do you know if this company owned a logging road?

A. Yes sir, it did.

Q. What was the length of it?

A. About 25 or 26 miles. We had one branch connecting Thompson with South Manistique.

Q. Did it run on beyond the point where it made the connection?

A. No sir. The main line, except through Thompson, ran through timber land.

Q. I ask you if you typewrote this affidavit?

(Witness is shown affidavit, a copy of which is hereinafter inserted.)

586 A. I believe I did, it looks like my typewriting.

Q. Did you sign and swear to it?

A. Yes sir, that is my signature.

Q. Read the affidavit.

Mr. BUTTERFIELD: I object to the reading of the affidavit, that it is incompetent and immaterial and not the best of evidence.

The following is a copy of the affidavit presented to witness to be read to him:

STATE OF MICHIGAN, }  
County of Schoolcraft, } ss:

Harry D. Norris of Thompson, Schoolcraft county, Mich. being first duly sworn, deposes and says, that he is the superintendent of

the F. & F. Lumber Co. Ltd. a corporation limited of Grand Rapids, Mich. which is the sole owner of a railroad from the village of Thompson, Schoolcraft county, north through said county about twenty miles and has personal knowledge of the facts herein stated and knows the same to be true.

That said road is standard gauge and was built for the sole purpose of use as a lumber and logging road in connection with the business of the Delta Lumber Co. of which it was purchased by the said F. & F. Lumber Co. Ltd. as a part of the lumber business of said company.

That the same is not adapted to and is not used in the general carriage of passengers and freight and that said company as such owner does not hold itself out as a carrier of passengers and freight

over and upon said railroad, as said railroad is not so situated  
587 as to be used for the purpose of carrying passengers or freight generally, as there are not settlements thereon except as hereinafter stated. One terminal is at said village of Thompson which has about two hundred and fifty inhabitants and the great majority of whom are employed by the F. & F. Lumber Co. Ltd. and he believes that if said company's business at Thompson were discontinued, not to exceed fifty of said inhabitants would remain, that this is the only settlement on said line, the other terminal being in the woods.

That said road has never carried any passengers for hire, has no regular schedule or running time or rates of charge, possesses no passenger or freight equipment, other than about fifty logging cars, six freight cars, two cabooses and three locomotives, that the value of said road for use in connection with said lumber business, including equipment is approximately fifty thousand dollars, and for use other than incidental to said business the road is simply valuable as scrap iron.

That it is the present intention to take up said road and it will undoubtedly be taken up as soon as the timber in the locality where it is situated belonging to or purchased by said company is removed.

That freight has in a number of instances been carried for persons other than the owners, being limited to forest products and upon a special contract in each instance, and the total income therefrom during the present ownership, five years has been about five hundred dollars.

588 Said road is only operated to suit the convenience of the owners and on days on which the lumber business of the company does not require it, no trains are run, and the said road is constructed entirely upon a private right of way.

HARRY D. NORRIS.

Subscribed and sworn to before me this eighth day of July, 1903.

JOHN PATTERSON,

Notary Public.

Q. Did that affidavit state the true condition of affairs when it was given.

A. Yes sir as near as I knew.

Q. Do you know when this road was acquired by the F. & F. Lumber Company?

A. It was in 1899, if I am not mistaken.

Q. At the same time the lumber business was acquired?

A. Yes sir. From the Delta Lumber Company.

Q. What was the Delta Lumber Company?

A. I believe it was a corporation.

Q. There was no separate purchase of this railroad?

A. Lumped in as a part of the lumber business.

Q. That village of Thompson is a small settlement on the line of the road.

Mr. BUTTERFIELD. Objected to as leading.

A. Yes it is a little settlement.

Q. There are small lumber camps along the line of road are there?

A. Yes sir.

589 Q. What are these?

A. The nearest one we called Big Spring.

Q. Was this camp in active operation?

A. No. For a time it would be occupied and then for a time vacant.

Q. When it was used, was it used for the purpose of getting out lumber for the F. & F. Lumber Company?

A. No, sir, we never had a camp there.

Q. Was it a logging camp?

A. Yes sir.

Q. Were the logs purchased by your company?

A. No. We never got any except cedar timber.

Q. Would you purchase at the camp or the mill?

A. At the camp before they were manufactured.

Q. That was true of every thing that was taken out by your company?

A. Yes.

Q. The next camp?

A. The next point on the road we called "Pull Up."

Q. What was this?

A. It was a place on the bank of the stream where we pulled the logs out of the river.

Q. The next point.

A. The next point was out at section # 22. This camp was destroyed before 1902.

Q. The next point?

A. The next point was camp "Forty-one." That was our own camp.

590 Q. All of those you supported for yourselves you need not mention. Are there any other where you took logs from them for the purpose of shipping to your mill during 1902 or at a previous time?

A. Before that time, in 1899, we carried some from camp 22, some cedar products for other people.

Q. Did you carry anything for the Chicago Lumber Company?

A. No sir.

Q. Did you have a contract to carry lumber and timber for any one?

A. When I came there was a contract with these people to carry products.

Q. When was that contract made?

A. We made a contract with them in April or May of 1903, but did not commence hauling any of the products.

Q. At the time you gave this affidavit you had carried nothing for the Chicago Lumber Company.

A. No sir.

We had sold out before we done any of their work.

Q. Was there a man by the name of Petersen, who did some logging for you?

A. He did some logging for us. He worked for us.

Q. Was there a man by the name of Hickson?

A. I don't know the man.

Q. Was there a man by the name of Beaton?

A. Yes sir. The transactions with him were the same as with Petersen. Petersen worked for us and it was done entirely for us.

Q. Was there a man by the name of Rocksbury?

591 A. We carried nothing for him.

Q. Are there any other settlements or camps on the line of the road from which you carried for other persons other than yourselves the F. & F. Lumber Company?

A. I believe that we pulled a few carloads of stuff for a party by the name of Quinlan. We didn't buy his products.

Q. When was that?

A. It was in 1902 or 1901.

Q. The final terminus of this road was in the woods?

A. Yes sir.

Q. At Thompson what is the population?

A. I should say about 250 people.

Q. What is the occupation of the most of the residents, I mean the male residents?

A. The male population are employed by the company mostly and work in the mill.

Q. Suppose the lumber business of this succeeding company were taken away, would it still be a thriving settlement?

A. No I don't think so.

Q. Wouldn't it be practically abandoned?

A. Yes I should say so.

Q. You say that the F. & F. Company have sold this lumber business and with it this road?

A. Yes.

Q. Whom did you sell it to?

A. The style of the new firm is "The Thompson Company Limited." I will give you the names of some of the parties.

Q. Just state them.

592 A. Fred Cooper, C. B. Mersereau and Dr. Cole.

Q. This is a limited partnership?

A. Yes I think it is.

Q. Now considering the location of this road and the surrounding conditions of the settlement would you say that it was so situated as to be adapted to the business of passenger traffic and freight.

Mr. BUTTERFIELD: I object to that as immaterial and calling for the opinion of the witness.

A. I think it would not. It is a logging road. There would be nothing to carry.

Q. Did the F. & F. Lumber Company while it owned the road hold itself out as a carrier of passengers and freight in general?

A. They did not.

Q. Did the road ever carry any passengers during the period that you were connected with it?

A. We carried passengers, but not for hire except the last two months. That was when we began charging fares.

Q. You had not charged any fares up to that time?

A. Not to my knowledge.

Q. And if anything was collected or charged by the conductor it was not by your order and was not turned in to the office?

Mr. BUTTERFIELD: Objected to as leading.

Mr. WYKES: I will withdraw that question.

Q. If anything was collected by any of the men in charge of the train it was not turned in to the office.

593 A. I would like to say that I was not connected with the company for the first four or five months. During my connection with it, up to the last two months before we sold out we did not carry passengers for hire and didn't collect any fares.

Q. Do you know what this road is assessed at?

Mr. BUTTERFIELD: Objected to as immaterial.

A. I believe at about \$1000.00 per mile for the road bed and something added for personal property, cars and locomotives; I don't know what that is.

Q. About what would the entire road with its equipment be worth?

Mr. BUTTERFIELD: Objected to as immaterial and incompetent.

A. The road, I should say—well that is hard to estimate; I should say that is worth \$25000.00.

Q. And would not exceed \$50000.

A. No sir.

Q. If used as at present equipped.

Mr. BUTTERFIELD: Objected to as leading and suggestive.

A. Yes.

Q. And other than its connection with the lumber business it wouldn't be worth much?

Mr. BUTTERFIELD: Objected to as immaterial.

Q. The lumber business of this particular company that operates the road?

Mr. BUTTERFIELD: Same objection.

594 A. There is a value to it, to sell the cars, its second hand cars, if that is what you mean.

Q. Yes, that is what I mean.

A. I don't know the value of it.

Q. Is it worth any more than simply the value of the materials scrapped, other than as used in connection with the business of the lumber company?

A. Of course at the present time it is of value in connection with the hauling contract the persons owning it have with the Chicago Lumber Company.

Q. Aside from that, what is its value?

A. It would possibly be \$20000.00 in my estimation.

Q. Where you have carried freight during your ownership it was not on a line of schedule prices?

Mr. BUTTERFIELD: Objected to as leading.

A. We did nothing for any schedule prices; it was all special contracts.

Q. You had not schedule of freight prices or passenger fare?

A. When we carried passengers for the last two months we did have a schedule which we followed.

Q. Would the trains of this road run at times other than to satisfy the convenience of the F. & F. Lumber Company's business?

A. No sir. They would just run at our own convenience; anybody who wanted to ride when the train was ready to go, we let them ride and charged them a nominal fare for riding.

Q. State the equipment this road owned?

A. They owned three locomotives, one thirty ton weight; 595 the next size was probably eighteen to twenty tons weight, and a small locomotive used as a switch engine possibly five to eight tons.

Q. Did you purchase these new?

A. No sir. They were all there at the time we bought from the Delta Lumber Company.

Q. Now the cars?



A. Forty-nine Russell logging cars, six or seven flat cars, two cabooses and one box car and some hand cars.

Q. Any passenger cars?

A. No sir. They would have to ride in the caboose or on the engine.

Q. Did you at one time employ a man by the name of William Casey?

A. Yes, he was our mill foreman.

Q. Was he in a position to know the details in regard to the conditions surrounding this railroad?

A. His business had nothing to do with the railroad work. He only kept the time of the mill men.

Q. He had nothing to do with the transactions over the railroad.

A. No sir.

Q. Was he in a position to know whether or not you charged fares?

A. Only from hearsay.

Q. Did you discharge him?

A. Yes sir.

596 Q. Can you remember when?

A. Sometime in September or October. Less than a week before he went to Lansing.

Q. Did the F. & F. Company have any traffic arrangement of any kind with any other company?

A. We had a connection with the Manistique, Marquet and Northern road. Our track simply connected with their track. We had no connection with any road, except the Soo line.

Q. Take the case of the Manistique, Marquet and Northern would their shipments for other persons pass over your line and their line?

A. No sir.

Q. Were there any straight shipments for other persons over your line and the Soo line?

A. I believe not. I might modify that and say that we did pull an occasional car load of merchandise for the store-keeper. We used to let him haul his hay. We would charge the store for that. We owned the store.

Q. Did that occur frequently?

A. It would average a car a month.

Q. Was this road stationary during all the time you owned it?

A. The most of the main line was permanent the other end was shifted quite often.

Q. How much of the line was permanent?

A. About twelve miles.

Q. You understand the condition that still exists there,  
597 how much of it will continue to be shifted to the care of the logging business?

A. There are about eighteen miles that will be permanent while they are doing that work for the Chicago Lumber Company.

Q. Did the steamboats land at Thompson?

A. There was one line of steamboats that carried freight and passengers that landed there.

Q. Did they have a dock?

A. They landed at our dock.

Q. Did your railroad run into the dock?

A. Yes sir.

Q. Did you transport over your line for other persons freight that was hauled by the steamboat?

A. Our switch engine carried the freight from the dock to the ware house for the storekeeper.

Q. It was limited to what the storekeeper had brought?

A. No, there were two or three saloons in the town that brought in a few liquors and other things.

Q. What was the length of this haul over your line?

A. It was about forty rods.

Q. The entire carriage of freight for other persons during the five years previous to the time you made this affidavit didn't exceed what amount?

Mr. BUTTERFIELD: I object to that as immaterial.

A. I couldn't just say. I would have to go to the books to look the matter up, I couldn't say positively now how much it was.

Q. It might be anywhere from \$500.00 to \$1000.00, it 598 wouldn't exceed \$1000.00?

A. I wouldn't swear that it wouldn't.

Q. Would your train run with regularity?

A. When we were hauling logs we would generally make two trips a day, but we didn't run on time schedule.

Q. Were there certain season- you didn't make any trips at all?

A. Yes, two or three winters we didn't have a train out for three months at a time. Quite often we didn't have a train out for a week or ten days.

Q. Would that ever occur in the summer?

A. Yes. There would be times when we were not hauling logs and didn't have a train over the road at all.

Q. That is all.

Cross-examination.

Mr. BUTTERFIELD:

Q. When did your company purchase the railroad?

A. I think it was in 1899, November. No I think it was in 1898.

Q. When did you first become superintendent of the railroad?

A. About the middle of July of the following year.

Q. You continued to be superintendent from July 1899 until about October 1903?

A. Yes.

Q. Were you superintendent up to the time the property was sold to this new company?

599

A. Yes sir.

Q. Were you in Michigan until that sale took place?

A. Yes sir.

Q. Where were your headquarters most of the time?

A. My headquarters were in Thompson.

Q. You were not at Grand Rapids much of the time?

A. No sir.

Q. The condition at Thompson, is that a town or a village?

A. It is not a town, it is a small settlement.

Q. No village government?

A. No it is a part of the township. The chief political officer there is the supervisor.

Q. The settlement, as I understand you is located on the shore of Lake Michigan?

A. Yes sir.

Q. How many years has there been a settlement at Thompson to your knowledge?

A. I don't know; I should say sixteen or eighteen years or thereabouts before we moved in.

Q. At the present time there has been a settlement at Thompson for some twenty-five years?

A. Yes sir.

Q. In the year 1902 and about the month of April, I wish you would state the number of business institutions that were there, which were not connected with the business of your mill.

A. There were three saloons, a meat market, there was a little corner grocery.

Q. In the country store it was what is generally known as a general store, you kept all sorts of supplies, tools, grain, provisions, and hardware?

A. Yes sir.

Q. Had the F. & F. Company any interest in the meat market?

A. No sir.

Q. I presume, of course, it had no interest in the saloons?

A. No sir.

Q. Was there a postoffice at Thompson?

A. Yes sir.

Q. Would you say for how many years there had been a postoffice there?

A. I can't say.

Q. What was the size of the settlement in 1902 in comparison with what it was when you first went there?

A. I don't think it had grown any.

Q. I take it that the men who were employed by your company, had previously been employed in the same capacity by the Delta Company?

A. Yes sir.

Q. What was the average output at your mill during the time that you were in charge of it?

A. From eighteen to twenty million feet a year.

Q. Where was the bulk of it shipped after being manufactured?

A. To the Chicago market by boat; the bulk went to Chicago, some of it went East.

Q. Such of it as went East went practically where?

A. Buffalo, Bay City, Albany, New York.

601 Q. To each of these places you have named it went by boat?

A. Yes sir.

Q. What was the name of the steamboat line to which you have referred, that made regular landings at Thompson?

A. The Hart line.

Q. Where did these boats run?

A. They ran from Green Bay to Mackinaw, Charlevoix, Soo, Potoskey.

Q. Did the boats land freight and passengers at Thompson?

Mr. WYKES: I object to this line of questions and testimony as immaterial.

A. Once in a while they landed a passenger at Thompson.

Q. Were those passengers destined to some other point north of Thompson?

A. Maybe one or two miles up for a logging camp.

Q. Was there any other railroad line at Thompson?

A. No sir.

Q. You had a branch line from Thompson along the lake shore to South Manistique?

A. Yes that was about four miles.

Q. The next market of importance to the market to Thompson was at South Manistique?

A. There was no market there.

Q. During your time there was not a settlement in the place?

A. No sir.

Q. Where was the next place larger than Thompson where people could buy household supplies?

A. Manistique.

602 Q. How far was that from South Manistique?

A. About three miles.

Q. On what railroad?

A. Two roads, the Soo line and the Manistique, Marquet and Northern.

Q. If any person landing at Thompson had occasion to travel to Manistique it was a natural thing to go over your railroad to South Manistique.

Mr. WYKES: I object to the question as calling for a conclusion. I will object to this entire line as immaterial.

A. No sir.

Q. How would they get there?

A. There was a steamboat line running from Thompson to Manistique. And livery rigs, most every body drove; we didn't connect with any train. There was a stage line.

Q. What was the charge on the stage for a person to go from Thompson to Manistique?

A. I think \$.50 a person.

Q. Did passengers in your employ ever ride on your road from Thompson to South Manistique?

A. Yes sir.

Q. What was your charge?

A. I think it was in the last two months 15c. from South Manistique to Thompson.

Q. What was it before that?

A. It wasn't anything.

Q. I understood that you didn't run trains very often, only spasmodically, only when you had logs.

603 A. We didn't run trains from South Manistique to Thompson regularly. There were many days when no train was run.

Q. Was that branch in existence when you bought in there?

A. Yes sir.

Q. And if the storekeeper or saloon keeper or anybody else had freight coming to Thompson by the way of the Soo line or Manistique, Marquet and Northern it was your custom to haul it in for them over that branch?

A. Only in car lots.

Q. Was there a charge made for that?

A. Three dollars a car.

Q. What other freight came in in car lots, came in by Delta Junction?

A. Yes sir.

Q. Did you understand what the charge was?

A. Three or four dollars a special charge per car.

Q. Did that include the return of the car to Delta Junction?

A. Yes sir.

Q. Did your cars ever go on the Soo line?

A. No sir never.

Q. Did your cars ever go on the Manistique, Marquet and Northern road?

A. Yes.

Q. In those cases how far did they go?

A. I guess they hauled logs for, say thirty-five miles away. Our pull was from our camp to South Manistique.

Q. At Delta Junction did your line cross the Soo line?

A. Yes sir.

604 Q. What protection was established at the crossing?

A. There was no protection except that we stopped trains at the crossing.

Q. Did the Soo line trains stop?

A. Yes.

Q. Do you know whether that protection was ordered by the commissioner of railroads?

A. I don't know.

Q. And all the Soo line trains stopped at the crossing?

A. They were supposed to.

Q. Was there any guard what ever?

A. No sir.

Q. By your line the first place you would reach going north was Big Spring.

A. Yes.

Q. How many people were living at Big Spring camp during the year 1902?

A. About one dozen people.

Q. Does that include the entire gang that was employed there?

A. Yes.

Q. Was the work at Big Spring going on then as fully as at any time?

A. Yes.

Q. It wasn't very much of a camp?

A. No.

Q. Whatever was hauled from there, excepting only the cedar, you hauled for other people.

A. That was the only thing was hauled from there, was  
605 the cedar products we bought ourselves.

Q. Then it is true there was nothing hauled from that camp except what belonged to your company?

A. Yes.

Q. How far was that from Thompson?

A. About eight miles.

Q. Was the same thing true at Pull Up?

A. Yes.

Q. But at No. 22 there was some shipments hauled for other people?

A. Yes.

Q. Was it ever in less than car loads?

A. No.

Q. What was the rate per car load?

A. Three dollars per car.

Q. The same rate that you charged?

A. We had to carry out a contract that had been made by the Delta Company before we went in there.

Q. Then I take it your reason why the charge of three dollars was made was because of the contract that the Delta Company had made.

A. I guess that was right.

Q. How many men were employed at No. 22?

A. From twenty-five to forty men at that time.

Q. Did these men ever go down to Thompson? or any other place on your road?

A. Yes.

606 Q. Any charge ever made?

A. No sir.

Q. Where did they ride?

A. They rode in the caboose or in the engine.

Q. Did you have a conductor on the train?

A. Yes.

Q. Did he have any badge or cap or other mark to indicate his position as conductor of a train?

A. Sometimes a hat band, but very seldom.

Q. How about the camp supplies and tools that had to go back and forth, were they carried free?

A. No we charged them for carrying the freight.

Q. What was the rate for carrying supplies?

A. From 12 to 15c. per hundred.

Q. Who received the freight money for transportation?

A. The cars were loaded up and unloaded and the conductor would get the weight from the storekeeper.

Q. No billing was ever made.

A. No sir.

Q. When you said there was no charge made for carrying passengers to #22, did you say that because the company never received any money for it, or do you know that the conductor himself never collected any money.

Mr. WYKES: I object to that as immaterial and incompetent.

A. I suppose that would be possible.

Q. No fare was turned into the office and he had no authority to collect fares?

607 A. Yes sir.

Q. The business developed to such an extent that before you left you inaugurated a system of charging for the transportation of passengers.

A. Not entirely on account of the development in business but because of the drunks working for the Chicago Company who were going down and up all the time. They had a gang of men in their camp that always wanted to be carried through.

Q. I understood you to say that up to the time that the Chicago Lumber Company began its operations the only camp along the line that was operated by other people, was camp No. 22?

A. Yes except the jobbers I mentioned before.

Q. Then as soon as there came into the woods any company with which you had no contract relations whatever you began to make a charge for hauling passengers to that camp?

A. We were forced to it.

Q. You stated in this affidavit that you read that this equipment and railroad was worth approximately \$50000.00?



A. Perhaps so. If used in connection with lumber business.

Q. At the time you sold out you considered the road and its equipment was worth \$50000.00

A. I wouldn't say that for we didn't get that for the road.

Q. Well then do I understand that you want to modify what you said in your affidavit in this respect.

A. What I meant to convey when I made that affidavit was that the road while we had a lumber business to keep it going was worth that amount of money.

608 Q. I suppose that as business men it was your purpose in the operation of the railroad to make it yield as much income and benefit to your company as you could.

Mr. WYKES: Objected to as immaterial.

A. Yes sir.

Q. It was your intention to make the railroad be as much a benefit to your business as was possible, that was what you had it for, a source of revenue?

A. We didn't consider that as one of the sources of revenue?

Q. Whenever it was possible that a lumber proposition from which there was to be a large amount of revenue, could be found, you availed yourself of the opportunity?

A. Whenever we considered it would benefit our company, yes.

Q. I suppose to that extent it was just like any other railroad that was used for a similar purpose?

Mr. WYKES: I object to that as calling for a conclusion.

A. I don't know much about any other railroad. I was never connected with anything but a logging railroad.

Q. Did you ever have any connection with a logging railroad that was operated by a railroad company?

A. No sir.

Q. Do you know of or have you ever had an occasion to work near a railroad that was operated by a railroad company so that you personally had an opportunity to observe their method of doing business?

Mr. WYKES: Objected to as immaterial.

A. Yes.

609 Q. What road?

A. That was the G. R. & I R. R. over which road we shipped all of our lumber at one time.

Q. Do you remember the name of the branch?

A. It wasn't a branch, it was a part of a main line.

Q. How did you get them to the railroad or main line?

A. We had a number of our own tram cars from our line to the G. R. I.

Q. I understand that there — a large number of what are known as logging branches of railroads in Michigan which are owned and

operated by railroad companies as a part of their railway system, and I would like to know whether you have observed the method of doing business of any of these branches.

A. I never had any connection with any of these.

Q. I mean have you ever had occasion to do or observe the lumber operations as they are done and carried on these branches.

A. I have observed them in a general way.

Q. Is there any material difference between the method that was made use of in operating your road for the business that you had to do and the method made use of in operating a similar logging branch by a similar company?

Mr. WYKES: I object to that as immaterial, as calling for the conclusion of the witness and on the further ground that the witness had not shown knowledge for the conditions under which railroad companies operating logging roads do business.

610 A. I should say there was every difference in the world.

A railroad company operating any kind of a road should have everything in system. When there was little business to be hauled it was a matter of bother and not a matter of revenue to us.

Q. You did expect to receive revenue from the business done for the Chicago Lumber Company?

A. Yes sir.

Q. What was the reason you discharged Casey?

A. On account of intemperance.

Q. Up to the time you discharged him you paid him \$1200.00 a year?

A. At the time we discharged him he was drawing \$1200.00 a year. It was more than he was worth because he got drunk very often.

Q. Did you every think he was dishonest?

A. No sir.

Q. That was your only objection that he was intemperate?

A. Yes.

Q. If Casey says that he himself more than once had ridden on your railroad and had paid money to the conductor for his fare, you have no reason to doubt the truth of his statement?

A. It would depend on the time that he rode, if it was during the time previous to the last two months that we owned the road, I would doubt his word.

Q. You had been charging fares two months previous to the discharge of Casey?

A. About six weeks.

611 Q. And you adopted a schedule of fares from Thompson to South Manistique and then you equipped the conductor with a cap and punch and issued tickets?

A. Yes.

Q. Do you know whether that is still being done?

A. Yes I believe it is.

Q. The Chicago Company had a large quantity of logs or skids before you made a contract to haul?

A. No sir.

Q. Was your contract made before there was any cutting at all?

A. Yes.

Q. When did you say the contract was made?

A. I think in April or May.

Q. The railroad was a standard gauge?

A. Yes.

Q. And constructed in all respects as other logging branches with "T" rails and cross ties, spikes, fish plates?

A. Yes.

Q. The locomotives were of standard type for the size that you needed?

A. Railroad people would call them "Back numbers."

Q. They were bought from some steam railroad?

A. Yes second hand.

Q. The Russell cars just describe them?

A. They are an eight wheel car, two flat wheel trucks; the reaches were 22 feet long, no platform; the logs were held on with pins and chains.

612 Q. These Russell cars are a standard make used on a great many logging roads.

A. Yes.

Q. Was the box car a standard car?

A. It had eight wheels, was home made.

Q. What were the flat cars?

A. Home made.

Q. What was the caboose?

A. Home made had eight wheels.

Q. In the winter time you didn't run a train and the reason was because the snow was so deep you couldn't?

A. Well that didn't have any effect.

Q. Was it because the camp would shut down for a time?

A. No, but sometimes there were no logs to haul.

Q. That is all?

Redirect examination.

Mr. WYKES:

Q. At camp No. 22 I understood you in your direct examination to say that operations there were completed before 1902?

A. Yes.

Q. The carriage was limited to forest products, with the exception of camp supplies?

A. Yes.

Q. During the year 1902 were you logging up in the Manistique Marquet and Northern?

A. That was so to some extent.

- 613 Q. You were not doing it continually ?  
 A. No sir.  
 Q. During that year there would be any number of months when you did not do it ?  
 A. Yes.  
 Q. Was there anything to call passengers up on the main line during the year 1902 other than the Chicago camp ?  
 A. That was our own camp.  
 Q. Now the fare schedule that you adopted was limited to persons going to your camp and the Chicago Lumber Company.  
 A. Yes.  
 Q. That is all.

Recross-examination.

Mr. BUTTERFIELD :

- Q. In the case of sightseers going to Big Springs were they carried free ?  
 A. Yes.  
 Q. And they were always carried when they wanted to go ?  
 A. Yes, if they didn't overcrowd us.  
 Q. That is all.

614 THOMAS FRIANT, witness produced on behalf of the defendant, being first duly sworn by said notary, testifies as follows :

Direct examination.

Mr. WYKES :

- Q. Where do you reside Mr. Friant at the present time ?  
 A. Oakland, California.  
 Q. You are connected with the F. & F. Lumber Company of Michigan ?  
 A. Yes I was.  
 Q. And you were connected in what capacity ?  
 A. I was a member of the co-partnership and manager of the company. I was chairman under the law under which we were working, I had the general management of the whole thing.  
 Q. Did you have personal knowledge of the character of the business of the company.  
 A. I did.  
 — And knew the amount of transportation for others and for your own company ?  
 A. Yes.  
 Q. You knew as to its arrangements with any other persons for carriage ?  
 A. Yes.  
 Q. You heard Mr. Norris's testimony, is it true ?

A. It is true except in regard to the rate on the special contract of the Delta Company. Mr. Norris said it was three dollars  
615 per car. It should have been four dollars. I don't think Mr. Norris ever saw the contract.

Q. Understanding the surrounding conditions of this road and its situation, would you say that it was adapted for the carriage of passengers and freight?

Mr. BUTTERFIELD: Object to that as incompetent and immaterial and calling for an opinion.

A. No sir.

Q. Did the F. & F. Lumber Company during the time it was owned and operated by you hold itself out generally as a carrier of passengers and freight?

A. It did not.

Q. Did it have a regular schedule of fares and freight prices?

A. It did not except during the last two months of its existence and then only a passenger schedule.

Q. When you carried freight you did it how?

A. That depended on the kind of freight.

Q. I mean for other persons. And I will ask you now the question when you carried freight for other persons it was under a special contract was it?

A. Yes.

Q. Are the majority of the persons living in the village of Thompson employed by the F. & F. Lumber Company?

A. When we owned it they were practically all, perhaps six or eight people did not.

Q. So practically there would be no settlement there if it were not for the business of this company?

616 A. No I should say not.

Q. Are there any other settlements on the line of this road?

A. No sir.

Q. Is the road valuable for any purpose other than its connection with the lumber business?

A. It is to sell. It is worth something to take up and sell.

Q. Has it any further value further than its use as a part of a lumber business.

A. None whatever.

Q. Was the road operated at any time to suit the convenience of persons other than the F. & F. Lumber Company?

A. Never for one single moment.

Q. You didn't regard yourself as being in the railroad business?

A. We did not.

Q. It was operated as incident to use in connection with your lumber business only?

A. Yes.

Q. The road is constructed over a private right of way?

A. It is. We own the right of way.

Q. Originally it was constructed entirely for the traffic of the Delta Lumber Company?

A. It was.

Q. The road shifts from place to place to do the business and to take the timber in the most convenient way?

A. Yes sir.

Q. The permanent roadway is limited to how many miles?

617 A. A distance of about twelve miles from Thompson to Pull Up.

Q. There is a further distance that will be practically in a shifting condition during the operations of the Chicago Lumber Company.

A. Yes sir. Seven or eight or ten miles.

Q. That will be shifted practically after the operations of the Chicago Lumber Company?

Mr. BUTTERFIELD: Objected to as immaterial and incompetent.

A. Without a doubt.

Q. When the company fixed a rate for passengers it didn't intend to go into the railroad business?

Mr. BUTTERFIELD: Objected to as leading and suggestive.

A. We did not.

Q. Was it intended to keep down the number of passengers?

Mr. BUTTERFIELD: Same objection.

A. That was the intention.

Q. Was it intended as a source of income?

A. No sir.

Q. That is all.

Cross-examination.

Mr. BUTTERFIELD:

Q. Do you mean to say that the purpose of your company in establishing a schedule of rates for passengers was to prevent passengers from riding on your train?

A. Yes I do. There was such a desire for travel.

Q. Your intention in fixing a charge and establishing a rate and issuing tickets and giving your conductor a punch was to prevent people from riding?

618 A. Yes. That is what I meant to say.

Q. They still persisted in riding?

A. So far as that I have no personal knowledge, I wasn't there during the last two months.

Q. How long before the passenger fare was established did you leave there?

A. It was about that time.

Q. Were the passenger fares established as a result of any meeting of the board or members of your company?

A. No sir. I had everything to do with it.

Q. Any body connected with the company have anything to say about establishing passenger fares except you?

A. No.

Q. You were the only one that had any connection with it?

A. Yes.

Q. You don't know yourself how many passengers were carried under the schedule you adopted?

A. No sir.

Q. You don't know how much the schedule was?

A. No.

Q. After the schedule was adopted and the rates fixed for carrying passengers did they still continue to ride on your train?

A. I couldn't tell you.

Q. How did you arrange this passenger business, did you issue a circular?

A. No I called Mr. Norris into the office and said "How are we going to prevent these drunken loafers from continually riding up and down on our train, injuring our business and getting nothing for it." He said "Why not something of this character." I called up my attorney on the telephone, Mr. Dunton, and asked him if our risk in case of accident would be greater if we charged fares than if we carried passengers for nothing. He didn't think our risk would be any greater. At once I instructed Mr. Norris to get the necessary blanks and formulate a rate of fares and have some tickets printed and had him instruct the conductor to collect fares from every one passing over our road unless he had a pass. I also instructed him to give passes to all worth-employees and all heads of the different apartments.

Q. What arrangements were made for the purchase of tickets by the people at the Chicago camp desiring to go down to Thompson?

A. None that I know of.

Q. You don't know how the schedule was worked out, whether the conductor would sell tickets on the train?

A. He would collect fares if they had no tickets.

Q. Did he have a form of receipt to give for fares collected?

A. I don't know.

Q. But the purpose of all this was to prevent passengers from riding on the train.

A. That is true.

Q. It was to prevent all transfer of passengers?

A. I can't answer that without explanation.

(Mr. WYKES: Make your explanation, Mr. Friant.)

620 A. As a matter of fact the laboring men for the past year and a half have been very restless in that locality, they would go into camp and work a day or two, earn from five to ten dollars;



ask for their pay; come out and spend the money for drink, get drunk and go back to camp and work a few days longer. That is the character of passenger traffic over that logging road, it was our idea to prevent as much as possible and that is just why we established that rate. A lot of drunken men on a train, a lot of men coming in and out, all together was a detriment to our business and a bother to the trainmen.

Q. I understood Mr. Norris to say that this arrangement was adopted with reference to the Chicago Company's camp.

A. That is true with reference to the men working for the Chicago Lumber Company.

Q. Now isn't it true that the underlying purpose of the arrangement was to increase your own business and your own revenue.

A. Yes.

Q. You state that the transportation of freight for outsiders was always on a special contract?

A. Yes.

Q. Do you mean that in case a carload was brought in for the saloon keeper, that you made a special contract?

A. Never did such a thing happen.

621 Q. Didn't you bring in food and provisions for the storekeeper?

A. That was entirely delegated to the man who ran the store, but it was very small.

Q. How about carloads of freight coming from Delta Junction for other people?

A. It didn't come for other people; for ourselves, we owned the store.

Q. You got something from them for the freight?

A. Yes.

Q. As to this you had a uniform rate you charged up the store with, three dollars for every car?

A. Yes.

Q. You didn't enter into a contract for every car?

A. No.

Q. You stated that the road is not adapted to the business of a railroad.

A. I don't think so.

Q. You say that the road, taking into consideration the situation and surroundings, is not adapted for the business of carrying freight and passengers generally?

A. Yes.

Q. It is adapted, is it not for the purpose of doing all the business, all the railroad business there is to do?

A. Yes.

622 Q. If it should happen that up at Big Springs or at the Chicago camp, there should be discovered a copper mine or a great city should grow up there, the F. & F. Company's road would be adapted to all the business that came its way.

Mr. WYKES: Objected to as speculative.

A. The road is built for a special purpose; built with cross ties, fish plates; there is not a single bridge could stand the test of the State examiner. There is not an air break on the road. The road bed is all right; twenty-five or thirty pound rails. The bridges have not a single guard rail, are not constructed in accordance with the regulations for regular line roads. There is not an air break on the line, never was. No passenger coaches; nothing except Russell cars and cabooses. It is not adapted at all to the conducting of a general railroad business, but for special logging purposes only.

Q. It is adapted, is it not for all business that it has ever been able to get?

A. It has never made it an object to get any outside business, except the contract with the Chicago Lumber Company.

Q. The business of the Chicago Lumber Company is the first business you have seen that you thought it was an object to get?

Mr. WYKES: I object to arguing with the witness.

A. No sir.

Q. What other business has there been that you thought would be an object in getting, that you didn't get?

A. This question requires a long answer. There is three million feet of logs just above Pull Up. They were anxious to have  
623 me name a price for pulling logs over this road. Charles Ruggles of Manistee was exceedingly anxious that I should name a price upon the entire branch. Boniface Brothers owned a mill and they have been anxious that I should haul over the road for their mill these past two years. Mr. J. M. Valentine two years ago tried to enter into an arrangement with me to haul cedar, hemlock, bark and logs over the road. There are a number of others who have within the past five years desired to enter into an agreement with the F. & F. Lumber Company to haul their products over the road, but knowing that our own private business required all the cars and locomotives and capacity of the road, we have refused to enter into any such agreements.

Q. You mean by that in order to have transported provisions and forest products for the various persons, it would have been necessary to add to the equipment?

A. Yes, and add to the road as well.

Q. You couldn't figure that there would be sufficient compensation in the business in sight to warrant the expenditure of money to add to the road?

A. Yes perhaps that is the reason.

Q. That is the reason why you have refused these men a price?

A. No sir that is not the reason.

Q. Do you mean to say that you could see there was something in it for the F. & F. Lumber Company and you would still refuse to do the business?

A. Yes.

624 Q. Did you assign to these men who made these offers, did you tell them that was the reason because you had got to increase the road before you could handle their business?

A. I did not; I told them it was our own business and freight. It was our business first.

Q. You reached a point where you did think you could do the Chicago Lumber Company's business?

A. Our business was not so great at that time.

Q. You didn't use your road for your own business so much?

A. Our timber was mostly all cut.

Q. Did Ruggles and Boniface Brothers bringing timber interfere in any way with your business?

A. It did not.

Q. Do you know it was of the same kind?

A. No.

Q. It came into the same market.

A. Yes.

Q. Didn't that consideration enter into your refusal to do the business?

A. No sir.

Q. There was no one else to handle it?

A. I didn't think of that. We needed the road for our own business.

Q. Did you have anything in addition to the products?

A. Yes.

Q. After all you couldn't see how it was an object for you to do it?

625 A. I wasn't a common carrier until I could see there was something in it. It was just like this. I got four mules and a wagon load of lumber. I got these mules and the wagon to deliver that timber to the next town. I meet a friend of mine on the road and he says let me ride. I do. I meet two or more friends and they say let us ride. I must deliver this lumber, but if I take these men on I can't do it; I can't accomplish my purpose. It was for the purpose of doing my lumber business that I had that road. When I got through with what was in sight, then I made the contract.

Q. Then if the position taken by the other side is true you should have taken up the road when you got the business through?

A. Yes so far as I am concerned it is true.

Q. You made arrangements and offered to sell out the F. & F. Company?

A. Yes. That was because the road was dependent on that business.

Q. When you adopted a schedule of passenger fares and charged people for riding over the road and gave instructions that nobody should be carried unless he had a ticket or a pass or paid his fare, you considered that your road was adapted to carrying the people you sold tickets to?

A. I couldn't handle them ; I was simply doing what the people were forcing me to do.

Q. If you sold a ticket for \$25 to a woman to go up to the lumber camp, didn't you expect to give her suitable transportation?  
626

A. We haven't got a car that is suitably adapted to carrying a woman any place.

Q. You did agree to get her up there for \$25?

A. She saw the manner in which she was to get there before she bought the ticket.

Q. And you would take her up there if she bought the ticket no matter how you got her there?

A. She would have to take what we had.

Q. The names of these people you mentioned who were anxious to make contracts with you were whom?

A. Charles Ruggles, Manistee, Boniface Brothers, Garden Bay, J. M. Valentine.

Q. Did these men succeed in getting their timber out?

A. No sir. It is still there.

Q. The only reason is because you wouldn't ship it?

A. Yes I suppose so; there are more than these.

Q. You say there is a State law that regulates the character of bridges of railroads in general, in what respect do they designate what should be done?

A. Particularly in reference to guard rails, cross ties, keys between them. If a locomotive goes off the track that all the ties do not loosen. Then there are certain guard rails located at certain bridges.

Q. Do you know whether that is a State law or regulated by the commissioner of railroads?

A. Perhaps it is regulated by the commissioner of railroads.

627 Q. How did you happen to get into that matter of bridges?

A. When I suggested charging fares I asked Mr. Norris and Mr. Dunton what was necessary to make it a regularly equipped road for common carriers. And then some one told me about the bridges.

Q. As a result of all that conference did you adopt a schedule?

A. Yes.

Q. You believed your liability to the passengers injured would be just the same when you charged fares as when you carried them free?

A. About the same, a little difference.

Q. Has any passenger ever been injured on your road?

A. No sir, not to my knowledge.

Q. So that the question has never come up whether you are liable to passengers as common carriers or not.

A. No sir.

Q. Did your attorney advise you that your liability was the same?

A. I only rung him up over the telephone.

Q. Did he advise you that in order to operate your railroad for carrying passengers that you must put in these guard rails, keys and fix your bridges?

A. I don't think that advice came from him. It came from my master mechanic.

Q. When did you get notice from your master mechanic that these things were necessary in order to comply with the law?

623 Mr. WYKES: I object to all this line of testimony as incompetent and immaterial.

A. About the time we were agitating the question of fares.

Q. Was that suggestion taken up with your legal adviser as to whether or not it would be necessary as a matter of law to do it?

A. No sir. The conference was entirely over the telephone.

Q. Where is his place of business?

A. Man——

Q. What is the name of your master mechanic?

A. James Fitch.

Q. Did you have a chief engineer?

A. He was chief engineer and master mechanic both.

Q. Did you have a civil engineer?

A. No sir.

Q. If you had occasion to need one to put in a spur tract or something what did you do?

A. Sent one of the camp foreman. That was quicker.

Q. This man James Fitch, had charge of your motor power and also of your bridges?

A. Yes sir.

Q. He called your attention to the fact that there were certain requirements or some law that you had to comply with?

A. Yes sir.

Q. No action was taken?

A. No sir.

629 Q. You didn't equip any of the bridges with these keys and guard rails?

Mr. WYKES: Objected to as immaterial.

WITNESS: If these questions are being asked with the intention of bringing action against me, I want an attorney to represent me before I answer any further.

Mr. WYKES: You needn't answer.

A. I didn't.

Q. How long before this purchase of property by the F. & F. Lumber Company had you been in the lumber business?

A. Thirty years.

Q. All the time in Michigan?

A. Yes.

Q. During your thirty years' experience have you observed how railroad companies operate their logging branches?

A. I never saw a railroad company operate a logging branch.

Q. Is all your work in the upper peninsula?

A. No, some in the lower.

Q. Do you know a man by the name of McGrath in Roscommon county?

A. No, sir.

Q. Do you know the Mitchell Brothers?

A. Not personally.

Q. Do you know Magoun? He lives at Manistee.

A. I do not.

Q. Do you know Louis Sands?

630 A. I did a little business with him. Don't know him.

Q. Do you know where his operations are on the Manistee river?

A. No sir.

Q. You have never had any occasion to observe a logging branch that was operated by a railroad company?

A. None except the Manistique, Marquet and Northern.

Mr. WYKES: I object to this line of questions as immaterial and incompetent.

Q. That is a distinctly logging road?

A. No I don't think it is. It runs from Manistique to Shingleton. It runs a car and ferry.

Q. At the time you bought out the Delta Company what was the difference between your road and the Manistique, Marquet and Northern, how did it differ materially from your road.

Mr. WYKES: I object to that as immaterial and incompetent calling for a conclusion and not predicated on the knowledge of the witness, and that a comparison is made.

A. I don't think I quit- understand what you want me to say.

Q. You have said that your road was bot- adapted to carrying freight and passengers, I want to find out the difference between your road and any logging road.

A. I don't know the details.

Q. They have a regular schedule time table?

631 A. Yes. They run at certain hours each day. They comply with all the requirements of the commissioner.

Q. That is the only difference?

A. Their's a larger road, more of it.

Q. What you have just said does not apply to the road when you bought in?

A. When I first went in there five years ago.

Q. You have never taken any particular notice whether they have guard rails on the bridges?

A. Yes my attention was called to it once when I was riding with

my engineer. They are on several bridges. It was afterwards that we decided to charge passenger fares.

Q. Could you institute some comparison between your road and that?

A. No; he (my engineer) was riding in the car with me and he said "They made these people put so and so on that bridge" naming the guard rails, keys and ties.

Q. Do you know Mr. Casey?

A. I do.

Q. Did you discharge or did Mr. Norris?

A. Mr. Norris had entire control of that. I understand he did so. I was not there.

Q. Did you know that Casey was an intemperate man?

A. I did.

Q. Up to the time he was discharged, you regarded him as worth \$1200.00 a year?

A. You may take it so, it is not true for several years.

632 Q. Why didn't you discharge him a year ago?

A. Mr. Casey had been in my employ twenty years and had a family, children and wife; he was improvident. He lost his leg. I made a foreman out of him; he had never been a foreman before. He did work of foreman to my entire satisfaction for a year or so. Then he began to neglect the business. I caught him drunk once. I said to him "Your drunk." He said he was not drunk. I discovered the second year that he was not as attentive to business as he ought. That he was frequenting saloons. His wife came to me, told me he was drinking. I sent for him to come to the office, and expostulated with him. He promised to reform. I talked with Mr. Norris about him. We both recognized the fact that he was getting more and more incompetent every day. Mr. Norris thought he would have to let him go. I said "Keep him as long as you can." I had his family in mind. I learned since I came back that he was discharged. That he was maudlin drunk. We put up with him as long as we could on account of his family.

Q. That is the only reason you discharged him?

A. Yes.

Q. Did his wife live with him?

A. Yes.

Q. He has a grown up daughter, hasn't he?

A. Yes. She is in the normal school in Michigan. Whatever money they have the wife sequestered and saved it. He had been with me twenty years, perhaps more.

633 Q. Do you know where he is?

A. No, I wish I did.

Q. That is all.



## Redirect examination.

Mr. WYKES:

Q. You said this road was not adapted to railroad business, is that for the reason that there is not railroad business in the vicinity?

Mr. BUTTERFIELD: Objected to as leading and suggestive.

A. Not altogether.

Q. Have you ever attempted to comply with these railroad laws?

A. No sir.

Q. You have never considered yourself subject to the regulation of the commissioner of railroads?

Mr. BUTTERFIELD: I object to that question as immaterial and move to strike it out.

A. No sir.

Q. Is it a fact that there are a number of settlements on the Manistique, Marquet and Northern railroad?

A. Yes.

Q. What is the population of Manistique?

A. Seven thousand.

Q. Shingleton. How much is that?

A. A small town. A number of hundreds. I don't think  
634 so much.

Q. Has it a village organization?

A. I don't think so.

Q. Are there any other settlements along the line?

A. Yes. There are small logging camps and communities. There is Hiawatha.

Q. There is something there in connection with the camp?

A. Yes, a lodging house, a blacksmith's shop.

Q. When you entered into this contract with the Chicago Lumber Company did you intend to go into the business generally?

Mr. BUTTERFIELD: Objected to as immaterial.

A. No sir.

Q. Isn't the Chicago Lumber Company situated in practically in the same position in regard to this road to do what your company did when it was doing lumber business?

A. Yes. It is devoted to carrying their logs, ties, bark, etc.

Q. And maintained practically for the purpose of carrying the logs of the company?

A. Yes.

Q. You stated that you knew Mr. Casey, what would you — is his reputation for veracity and truth?

Mr. BUTTERFIELD: Objected to as incompetent and not a proper method of impeaching a witness.

A. It is not good.

Q. You are acquainted with his character?

A. Yes.

635 Q. What would you say as to that?

A. That is not good.

Q. That is all.

Recross-examination.

Mr. BUTTERFIELD:

Q. Do the men who comprise the Thompson Lumber Company, have an interest in the Chicago Lumber Company?

A. I think not.

Q. Do they have any timber along the line of the road?

A. They have some.

Q. Then practically the business of the Thompson Lumber Company is in operating its railroad for revenue?

A. Yes.

Q. Do you want to be understood as saying that you would not believe Mr. Casey under oath when he was sworn and testified in a court of justice about the matter of the character, the construction and operation of this railroad?

A. Yes, I will have to say that I would not believe him under oath.

Q. You say you have not read any of his testimony given in this case?

A. No sir.

Q. Did you know it was in the papers?

A. I think Mr. White told me. He didn't tell me what it contained.

Q. Did he tell you of anything that Casey had sworn to that was not true?

A. No sir.

636 Q. You never had your attention called to any of the testimony of Casey?

A. No sir.

Counsel reads testimony of Mr. Casey beginning at page 562.

Q. Is there anything in there that is not true?

A. Yes.

Q. What is it?

A. It is not true that Frank Rocksbury, Chris Peterson or any body else having freight carried over that road for themselves. They are all employed by the F. & F. Lumber Company.

Q. Anything else?

A. Yes.

Q. What else?

A. That is no Baldwin locomotive. It is so old that no man living could find out who made it. It is a long story to tell all that is untrue in there.

Q. If there is anything very glaring you could remember it?

A. The length of the road is not true. As I remember it now he says there was about eighteen miles. It runs about twelve miles.

Q. Do you include in that twelve miles, the branch over to South Town?

A. That was never called main line. We had only twelve miles of main line up into the country and four miles to South Town.

Q. Do you think of anything else?

637 A. It is not a corporation; it is a limited partnership. The Chicago Lumber Company never had over sixty-five men in the camp. That is not the weight of the rails. There are a few forty pounds, some thirty and some twenty-five. That is something he didn't know anything about.

Q. Did the E. & F. Lumber Company in 1902 carry freight for persons other than its own company.

A. We certainly had not carried freight for the Chicago Lumber Company up to that time.

WITNESS: This question in Mr. Casey's testimony "Did the E. & F. Lumber Company in 1902 carry passengers and collect fares? A. Yes." That is not true. This question "They had a sign up in their office saying they charged a limited fare," that is not true. They had a sign up in the office. In substance it says "We are not a passenger road in any sense, because we choose not to carry passengers but if they desire to ride they go at their own risk. I wonder he gets as near the truth as he does on questions he knows nothing about. I think that is all.

#### Redirect examinations.

Mr. WYKES:

Q. You have read the testimony of Mr. Casey and heard Mr. Butterfield read it?

A. Yes.

Q. Did he have access to your records to get this information from?

A. No sir.

638 Q. If he swears on cross-examination that he was not discharged is that true?

A. I couldn't swear to my personal knowledge. Mr. Norris has sworn that he did discharge him and I believe it; I was not there.

Q. He says that he kept the time of the men engaged in operating this railroad, is that true?

A. That is not true.

Q. If he says that in 1901 and 1902 you carried passengers for hire is that true?

A. That is not true.

Q. That is his testimony.

Q. If he says you operated your road for the convenience — other roads without reference to your own business, is that true?

A. That is not true.

Q. That is all.

Mr. BUTTERFIELD :

Q. That is all.

It is stipulated and agreed between the respective parties by their respective counsel that the transcript of testimony of the witnesses Harry D. Norris and Thomas Friant, as made by the notary and reporter, may be read in evidence as the testimony of said witnesses, without the signatures to the testimony, they being hereby waived.

639

Proceedings of February 23, 1904.

JAMES C. McLAUGHLIN, being recalled as a witness on behalf of the defendant testified as follows:

Direct examination by Mr. BLAIR:

Q. In considering the property of the different railway companies of the State for the purpose of assessing the value thereof as a State board of assessors, state what course the board pursue with reference to such reports as the railway companies made of their credits and liabilities.

Mr. ANGELL: That is objected to as incompetent and irrelevant.

A. I don't know that we ever base or give any consideration to or base any values of railroad property on that portion of the report—in fact I think we did not.

Q. Can you state whether or not to your recollection the railway companies or any of them when present before your board for the purpose of being heard when your board was sitting as a board of review, claimed any exemptions before the board on account of their liabilities as against their credits.

Mr. ANGELL: The same objection.

A. My recollection is that no company made any such request or representation.

Q. In arriving at the valuations which were finally determined by the board after review or during the course of the review state whether or not such final determinations of value were the result of compromise or whether they commended themselves at the outset to the individual judgment of the several members of the board of assessors.

Mr. ANGELL: That is objected to as incompetent and immaterial.

A. In many cases the final values were not, according to the opinion of the members at first. I hardly know what you mean by "of compromise" if you mean give and take, why I do not recall anything of that kind being done.

640

Q. Did certain members yield their views?

Mr. ANGELL: The same objection.

A. Certain members of the board were very insistent upon the valuations of some property and other members of the board finally yielded and agreed to those valuations or approached them and the roll was signed.

Q. How was it with reference to the valuations of the Michigan Central and the Pere Marquette?

Mr. ANGELL: That is objected to as irrelevant, immaterial and incompetent, under the bill and otherwise.

A. The valuations finally reached were not the valuations of a portion of the board to start with, or in fact until the very last hours of our meeting. The valuations thought to be right by a portion of the board were very much higher in both cases than the valuation finally agreed upon.

Q. Can you state what valuations you placed on the Michigan Central and the Pere Marquette prior to these last hours that you have referred to?

Mr. ANGELL: That is objected to as before.

A. My first value or the value that I wished placed upon the Michigan Central railroad property was fifty five million dollars. I yielded a little just before we—or I yielded to fifty millions dollars just before signing the roll in the first place, I mean before the review began and finally at the last moment yielded to a cut made of forty five millions.

641 Q. At the last moment, you mean after the review?

A. Actually at the very last moment, yes sir.

Q. You mean after you went over them, after the review before the State board of assessors?

A. Just before the review began when we had to certify to the roll I yielded my opinion as to fifty-five millions and accepted fifty million; I understand that appeared as the figure against the Michigan Central road when the review opened. Then after the review when it was necessary finally to get together I yielded further and consented to an assessment of forty-five million dollars. As to the Pere Marquette my opinion of the value was in the neighborhood of thirty-five million dollars.

Q. Can you state your course with reference to that the same as you have as to the Michigan Central?

Mr. ANGELL: The same objection.

A. A majority of the board placed that valuation at thirty million dollars—no, just before we closed our assessments and had to certify our roll for the review we had agreed upon thirty million dollars. When the matter was taken up and it was insisted that that should be lowered my recollection is it was reduced to 27 and

the roll was certified for review with that property standing at twenty-seven millions; that was against my judgment, and finally on review there was a further reduction of one million dollars leaving that property at twenty-six; I think those are the figures.

Q. Was that million added onto some other roads?

642 A. No sir. There were additions made to other roads but there was no—it was not added to the other roads I guess. It was taken off of that road.

Q. Who was the member of the board of assessors who was particularly insistent upon the reduction on the Pere Marquette?

Mr. ANGELL: That is objected to as incompetent, immaterial, irrelevant and an improper question in every way.

A. Well Mr. Sayre seemed more anxious for a reduction on that road than some other members of the board.

Q. Did you have a talk with Mr. Sayre in which he stated to you in substance that if you kept down the assessed values of the roads there would be no litigation arising in consequence of your assessments, and that he could find out for you what the railroads would be willing to stand?

Mr. ANGELL: That is objected to the same as before, and it is also leading and suggestive.

A. Yes sir, there was conversation between Mr. Sayre and me to that effect.

Q. I wish you would state what the conversation was.

Mr. ANGELL: The same objection as last above.

A. Well Mr. Sayre insisted that the valuations we were likely to place upon the roads were higher than the roads would stand for and that the result would be litigation and possibly a loss of the entire tax and at one time he stated to me he could find out what assessments the railroads would be satisfied with and on what assessment they would pay the tax without litigation and he asked me if I wanted him to find out and I told him no, he need not find out for me; I didn't want to know.

643 Cross-examination by Mr. BUTTERFIELD:

I understood you to say that in the preparation of the roll which was to fix a value for taxation purposes on the Michigan Central as of the second Monday in April, 1902, your first opinion was that the value should be fixed at fifty-five millions?

A. Yes sir.

Q. But just prior to the completion of the roll for the purposes of review, in other words on or about the 15th of December, 1902, you changed your mind to some extent, or at least without changing your mind you signed a certificate attached to that roll which left the Michigan Central at fifty millions.

A. Well fifty millions was arrived at at one time but just at what stage in the proceeding I don't recollect.

Q. Was that the sum expressed on the roll at the time it was submitted to the public for review?

A. No, I think not; I think forty-six millions was the amount at review time and then we took off one million dollars on certain representations made to the board by the representative. We have had so many figures on these roads that I am not distinct as to the figure placed opposite at each particular time.

Q. But you think now that it was not fifty millions but forty-six millions at the time that the roll was opened for review?

A. I think it must have been forty-six. Just previous to that time we had reached the figure fifty million.

Q. And the forty-six you say, if that was the figure, did not represent your judgment?

A. That is right; it did not.

644 Q. And your judgment was that it should be higher?

A. Yes sir.

Q. And then I take it, it very clearly follows from that, when the final roll was signed with the valuation of the Michigan Central at forty-five million, that was still more remote from your best judgment?

A. Yes sir.

Q. And you want to be understood here now as saying that the roll which fixed the value of the railroads on the second Monday in April, 1902 did not express your judgment on the true cash value of the properties upon that roll, or some of them, and particularly the Michigan Central?

A. I mean to say if I had had my own way in these matters that some of the figures would have been different but I yielded to the arguments, etc. of other members of the board and finally consented to those figures.

Q. Did they or did they not at the time you signed that roll represent your honest judgment of the true cash value of the various properties?

A. They represented what I was willing the roll should stand at. As I have said, if I had had my own way it would not have been quite that.

Q. Did they or did they not at the time you signed that roll represent your honest judgment of the true cash value of the various properties?

A. Not my individual judgment.

Q. Now the act under which you made the assessment provides, does it not that any member of the board who should approve a roll which contains a valuation of any property at more or  
645 less than he believed to be the true cash value of the property should be guilty of a misdemeanor and subject to punishment?

A. Yes sir.



Q. Then I take it according to your admission you were guilty of a misdemeanor?

A. Possibly.

Q. If it should turn out that the valuation of the Michigan Central when the roll was opened for review was forty-seven million instead of forty-six that would not change any other part of your testimony, would it?

A. No sir. I have given my best recollection of it.

Q. The fact is it was 47. You say that no consideration whatever was given to the statement by the company in the case of the Michigan Central of its debts and credits; did I understand you correctly?

A. Well, a note was made always of course of the financial condition of a road as shown by its statements of assets and liabilities.

Q. But you say no consideration was given to that subject in the fixing of the value in that road one way or the other, it had no influence upon the board?

A. It didn't influence the action of the board in finding the value of the Michigan Central property.

Q. How do you know?

A. Because I know what was talked about and what that statement showed and what the final result was.

Q. You don't know what anybody else on the board thought?

A. Except by what they said.

646 Q. But if they had reflections which they did not express you haven't any way of knowing what their reflections were?

A. No sir.

Q. All you can testify to as to what influenced the members of the board would be confined to your own case?

A. Except if a man talks one way and acts accordingly I think that he has acted his mind.

Q. But you think you are in a position to testify as to what did or didn't influence any other member of your board in reaching the valuation of the property of any road?

A. I think in these matters I was generally able to tell yes, when he made his figures and exhibited them and talked about what influenced him. We used to talk about these statements and figure what were credits and what were liabilities, etc. For instance, the statement of the amounts due from agents, we would say "that cannot be a credit because it is in the hands of the company, the company's agents, the corporation acts by its agents and the cash on hand, there is nothing to indicate whether it is cash in their own vault or safe or cash in the bank," etc.; those matters were gone over sometimes.

Q. And you say that you were able and are able now to state under oath what considerations had an influence upon the other members of the board in fixing their value on the property and what considerations had no influence.

A. I cannot say as far as that that I know all the considerations.

Q. How can you say you know any of them if you don't know all of them?

A. I know those that they spoke of when—

647 Q. (Interrupting.) You know what the members of the board said in your presence?

A. I know what they spoke of and when they act and vote accordingly I accept what they do as representing their minds.

Q. You do not undertake to say there may not have been other considerations than those that they talked about that influenced their minds, do you?

A. Oh, there may have been other considerations, sure.

Q. And there may have been a large number of other considerations, may there not?

A. I don't know how many there may have been; there may have been other considerations.

Q. You are not able to say, or are you able to say what all the considerations were which influenced your judgment in fixing the value of the Michigan Central Railroad property in 1902?

A. I am not.

Q. Then I suppose it would follow without much argument that you would not know all the considerations that influenced the other men if you don't know your own?

A. I don't know now what considerations influenced me in arriving at the Michigan Central; I think I did at the time.

Q. You think you have forgotten them, do you?

A. Yes sir. But we were speaking of that one consideration, a balance sheet as shown by the company or statements of assets and liabilities and I know that that was not taken into consideration and no additions made to the Michigan Central road on that account, on account of anything it showed.

648 Q. That necessarily involves, does it not a distinct effort on your part to testify to the mental operations of four other men when you say that you know that no consideration was given to it and that no valuation was added to or taken from on account of it—doesn't that distinctly involve an effort on your part to testify to the mental operations of four other men?

A. I didn't intend to.

Q. Isn't that the necessary result of it—how can it be possible that you know that that fact or any fact did or did not have an influence upon the valuation as fixed by four other men except that you know the reflections of those four other men?

A. I have tried to explain how those matters were taken up and considered and disposed of.

Q. You know they didn't say it had had any influence?

A. When they say it doesn't I accepted, and when they act accordingly I accepted as their mind.

Q. That is all you know about it, you don't know what they thought only by what they said, do you?

A. What they said and what they did is all I know of what they thought.

Q. You don't even know now what you thought yourself upon all the considerations influencing the value of the Michigan Central property.

A. I do not.

Q. You have spoken of two railroads as to which the figures on the roll did not represent your judgment of the true cash value, the Pere Marquette and the Michigan Central as I  
640 understood you. Were there other roads in the same situation, were there other instances on the roll where the valuation finally fixed did not meet your honest judgment of the true cash value?

A. There were others where I didn't agree in the first instance with the figures finally reached.

Q. Were there any where you did not agree in the last instance?

A. There were none that I did not consent to and finally approve.

Q. Answer my question, you are a lawyer and you know what my question is and I wish you would answer it. Were there any where you did not agree in the last instance?

A. No, I agreed to all of them.

Q. Were there any cases on the final roll as finally approved and finally signed where the valuations were either more or less than your honest judgment of the true cash value aside from the two you have stated, the Pere Marquette and the Michigan Central?

A. I think there were others but the names of the companies I do not recall now.

Q. I call your attention to Exhibit E attached to the bill of complaint, being the return of the State board of assessors to the order to show cause issued by the Supreme Court upon the application of the board of education of the city of Detroit which I think has  
650 been called to your attention before in this case and ask you if you signed and swore to that return in that case and to the paper, that is to the original of which the bill of complaint contains a copy.

Counsel shows paper to witness.

A. I did.

MR. BUTTERFIELD: We offer in evidence Exhibit E attached to the bill of complaint.

MR. BLAIR: We object to it as immaterial and irrelevant.

WILLIAM T. DUST, being recalled as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. BLAIR:

Q. I want to ask you whether in the course of the performance of your duties as a member of the State board of assessors in making

and reviewing the assessments upon the various railroad properties in 1902 you included or considered as an element of value in those assessed values the credits which had been returned by the various railway companies?

Mr. ANGELL: That is objected to as incompetent and irrelevant.

A. The matter of credits is not reflected anywhere in my judgment.

Q. How is it with reference to the fact whether the railroad companies or any of them made a claim before the State board  
651 of assessors for an exemption for credits on account of liabilities.

Mr. ANGELL: The same objection.

A. It is my recollection that there wasn't any such claim made by anyone, any of the attorneys or any of the roads.

Q. Do you remember having signed an affidavit in relation to the deduction of those credits which was made in answer to the order to show cause?

A. I don't remember the exact language of that now, it was prepared for us.

Q. You remember having signed it?

A. I signed the paper, yes sir.

Q. Let me ask you if this is a copy of that affidavit.

(Counsel presents paper to witness.)

A. Yes sir, I think that is it.

Q. I ask you to read the last paragraph upon page 13 of that affidavit.

A. "That in assessing the property of the complainant and the said corporations subject to assessment by a State board of assessors under the provisions of act 173 these State board of assessors did not include in such assessments the credits belonging to the said complainant and such other companies; although given full opportunity to be heard before the said board of assessors acting as a board of review upon the assessment made upon its property did not make application to have its or their debts deducted from its or their credits and made no objection to the said assessment of its property on the ground that debts were not deducted from  
credits."

652 Q. Let me ask you if any other member of the State board of assessors signed this affidavit with you?

Mr. ANGELL: I object to it as not the best evidence.

A. Mr. Freeman.

Q. And it was properly sworn to by both of you?

Mr. ANGELL: The same objection.

A. Yes sir.

Q. Do you remember what valuations were placed by yourself upon the Michigan Central and the Pere Marquette prior to the beginning of the review?

Mr. ANGELL: I object to it as immaterial, irrelevant and incompetent.

A. The very first figures before we finally — my own individual figures?

Q. Yes sir.

A. I think I can.

Q. I should like to have you state, if you can.

Mr. ANGELL: The same objection.

A. The Michigan Central was fifty one or fifty two millions and the Pere Marquette thirty-six.

Q. Thirty-six?

A. Somewheres along in there, yes sir.

Q. When were those figures changed?

Mr. ANGELL: The same objection.

A. They were changed the last evening before the review was had.

Q. The last evening prior to throwing them open for review?

A. Yes sir.

Q. How did they come to be changed at that time?

553 Mr. ANGELL: The same objection.

A. Through argument by some of the members and a desire on the part of myself to compromise with the other members of the board and agree on a value.

Q. State whether or not it was in accordance with that desire to agree so that the first assessment made by the board should have all the signatures of the members of the board or because your judgment was convinced that you signed that change.

Mr. ANGELL: The same objection.

A. I consented to the figures as finally fixed feeling myself as not entirely and solely able to value this vast property, and having full confidence in the other members of the board and in their judgment and their honesty, that possibly I might be mistaken and that the values as placed and argued for by some of the other members were likely as near true as mine were.

Q. You have remained a member of the State board of assessors since that time and you are now a member of the State board of tax commissioners and State board of assessors?

A. Yes sir.

Q. Have you recently completed an assessment roll for these same properties?

A. Yes sir.

Mr. ANGELL: That is objected to as incompetent, immaterial and irrelevant.

Q. From the experience which you have had and the investigations which you have made in the valuations of the properties of these railways, will you state whether or not in your opinion the assessment of the Pere Marquette and Michigan Central as made in 1902 was low or high.

654 Mr. ANGELL: That is objected to as immaterial and irrelevant.

A. Low.

Q. State whether or not the arguments which were made in 1902 with reference to the change of value, which as you recollect approximately you had fixed at 52 add 36 respectively for the Michigan Central and Pere Marquette, the arguments on behalf of the supporters of the change were calm and dispassionate or to the contrary.

Mr. ANGELL: That is objected to for the same reason as before.

A. Sometimes they were calm and again they were not.

Q. Were there any threats or was any intemperate language used by other members of the board of assessors for the purpose of bringing about a reduction?

Mr. ANGELL: The same objection.

A. Not towards me, no sir.

Q. Towards others in your hearing?

Mr. ANGELL: The same objection.

A. Yes sir.

Q. State what they were please.

Mr. ANGELL: The same objection.

A. Why I remember of one remark made by a member to Mr. Jenks in which the gentleman—the member—said “By God, I won’t vote with the minority on this board all the time, I want you to understand there will come a time when I will be voting with the majority”.

Q. Who was the member that made that statement?

A. Mr. Sayre.

655 Q. Mr. Jenks at that time was a member of your board?

A. Yes sir.

Q. And Mr. Jenks’ term was about to expire, was it?

A. Yes sir.

Q. Was Mr. Jenks present when the review was closed and the final assessment made?

A. He was not. He was not a member.

Cross-examination by Mr. ANGELL:

Q. When you signed your roll before the review do you recall at what figure the Pere Marquette was placed?

A. I don't. I would have to refresh my memory by looking up the figures.

Q. Do you recall at what figure the Michigan Central was placed at that time?

A. Well 46 or 47 millions.

Q. About 46 or 47 millions?

A. Yes sir.

Q. You at first thought that it ought to be valued at 51 or 52 millions?

A. Yes sir.

Q. When you signed that preliminary or uncorrected roll was it still your own individual judgment that the assessment should be higher than 47 million?

A. If it had been left to myself, I believe I would have placed it at a higher figure than that; Mr. Freeman's argument won me over from my former one, I struck out finally and thought I would never go below 48 after we had talked and up to the last night, but Mr. Freeman was very insistent and very earnest about the reduction on the Michigan Central and having full confidence in Mr. Freeman and in his integrity and judgment and intelligence, as I said before I didn't know but what he knew more about the properties than I did.

Q. Finally the figure was after review reduced even lower, wasn't it?

A. Yes sir.

Q. It was something like forty-five millions?

A. I think it was, yes sir.

Q. Now did that final figure represent your own individual judgment after reconsideration?

A. I can only answer that question, that if it had been left to myself it would not have been fixed at that figure.

Q. The Pere Marquette which you thought should have been fixed at 36 was finally fixed considerably below 30 wasn't it?

A. Well I think it was somewhere about 26 or 27 or 28, somewhere along there, I don't really remember now.

Q. It was below 30, wasn't it?

A. Yes sir.

Q. Many millions of dollars below your own individual judgment?

A. Below my own original figures, yes sir.

Q. Now, had the matter been left to your own unbiased best judgment at the last would you have placed it as low as it was placed?

A. My own individual judgment?

Q. Yes sir.

657 A. No sir.

Q. Then the final result, at least as to the Michigan Cen-



tral and Pere Marquette did not represent the result of your individual consideration?

A. It did not.

Q. What was the fact as to other roads than those two, were the final figures those which your own individual judgment would have fixed in every instance?

A. I would not care to state positively at this time as to just where my own figures were upon all the other roads, there were a great many of them; some I undoubtedly had higher than others and some I probably had a little lower than some of the others did.

Q. Then your own best recollection at this time would be that there were several other instances on the finally completed roll where your judgment, your individual judgment did not concur with the conclusions adopted by the board.

A. That is right, sir.

Q. Do you recall this affidavit, Exhibit E attached to the bill or return made by your board to the mangamus proceedings in the supreme court, do you not?

A. Yes sir.

Q. You recall the paper to which I refer?

A. Yes sir. Do you mean the paper we all signed?

Q. That you all signed in the supreme court as a return.

A. Against the Detroit board of education.

Q. It is known as Exhibit E and has been offered in evidence and I desire to ask if you recall signing and swearing to that document.

658 A. I did sign and swear to it, yes sir.

Q. You read it over first?

A. I had it read over.

Q. And the statements contained in it received your approval?

A. Yes sir.

Q. Or I take it you would not have sworn to it?

A. Yes sir.

Q. Why do you say, as you did a few moments since, that the matter of credits was not reflected anywhere in your assessment?

A. Because of the talk that we had with reference to that item.

Q. Do you know what was in your own mind about it?

A. Yes sir.

Q. And you recall what others said?

A. What others said, yes sir.

Q. And that is the whole basis for your remark?

A. Yes sir.

Q. What weight if any other members might have given to that matter in their own minds that they didn't speak about you don't know?

A. I could only know what they may have thought of by the language used in the talk.

Q. At the time the roll that is in litigation was finally approved and became perfect, January 15th under the old law, at that time

how many tax commissioners or assessors were in office and acting?

A. Four.

Q. There was yourself and Mr. McLaughlin?

A. Yes sir, and Mr. Freeman and Mr. Sayre.

Q. On or about the 14th of January, 1903 you four gentlemen did join in signing the statutory certificate or warrant to the corrected and finally approved roll, did you not?

A. Yes sir.

Q. And it was duly delivered by you as a basis of collection to the auditor general?

A. Yes sir.

Redirect examination by Mr. BLAIR:

Q. Do you recollect what figure Mr. Freeman put upon the Michigan Central?

Mr. ANGELL: I object to it the same as before, that it is irrelevant and incompetent.

A. Forty-six.

Q. Finally?

A. Finally.

Q. Was that his first figure?

Mr. ANGELL: The same objection.

A. No.

Q. What was his first figure?

Mr. ANGELL: The same objection.

A. Forty-eight or forty-nine, I think.

Q. Do you remember what the figure was on the Pere Marquette?

A. His?

Q. No, Mr. Sayre's figure on the Pere Marquette.

Mr. ANGELL: The same objection.

A. Twenty-two I think.

Q. And was that where the figures stood at the time this remark was made by Mr. Sayre that he would not vote in the minority at the time?

A. At twenty-two?

Q. Yes, sir.

A. No sir.

Q. Is that where his figures stood?

A. That is where he argued all the time, yes sir.

Q. I asked you with reference to Mr. Freeman's first figure. Has it come to your recollection since that question was asked you as to what it was?

A. Yes sir. I find now that the figure that I said, 46, was not the figure that Mr. Freeman insisted upon because of something in connection with the arguments there that Mr. McLaughlin just called my attention to.

Q. State what it was.

A. It was 42.

Q. What was the argument that recalls it?

Mr. ANGELL: The same objection.

A. Mr. Freeman was insistent that 42 was what the Michigan Central should be assessed at and I said "Mr. Freeman, what in your opinion should the Michigan Central go in at?" He said "Forty-two millions dollars," I said to Mr. Freeman "I would like to meet your views but I said "I cannot possibly consent to that value, I would stay here until hell is frozen over before I would agree to that figure." It is because I am not in the habit of using that language that I didn't remember that.

661 JAMES WALKER, re-called as a witness on behalf of the defendant.

Direct examination by Mr. WYKES:

Q. Have you had any occasion to familiarize yourself with the Street and Interurban Railway business, the manner of acquiring the franchise and the methods of doing business?

A. Yes sir.

Q. What has your experience in that regard been?

A. At the close of the Michigan Railroad appraisal in 1901, that is about the first of June as I remember it, the State Tax Commission desired me to make an investigation of the Street Railway properties, all of them in the State of Michigan, for the purpose of a complete valuation, so that they might review the assessments to see whether they conformed to the law.

In that capacity they appointed me as a consulting engineer to go out and look over these properties and gain that required information.

The work actively began about the first of September in 1901, and extended until sometime about the middle of March 1902; during that time I walked over nearly all the mileage of the street railways of Michigan; such small portion of the mileage as I did not personally walk over myself, was examined by Mr. F. W. Thompson, who assisted me, and Mr. Thompson was ex-superintendent of the Muskegon Traction & Lighting Company.

The first portion of the work consisted of a search of the records of the secretary of state, for the purpose of understanding the exact relationship of the different companies to each other, and involved

662 a search back through the records to discover if possible how many companies were actually doing business within the State. There were some 350 or 360 corporate titles upon the

books of the secretary of state and their reports were in such shape that they themselves did not know just what the companies were doing, and what companies were alive, and what companies were dead. So we had first to take a complete list and then starting with that to go out and examine each property by itself and find out definitely from the officers as to what the relationships of the companies were.

The usual process of examining the property was to make an inspection on foot, first of the trackage of the company, as to its nature and extent and its condition.

I walked the track, with a stenographer, and took down a literal description of everything as I saw it, giving my own judgment as to its condition &c. and got a complete descriptive record of the property as it stood.

The next process would be to examine the power houses and machinery and car tools of the company, also to inspect the rolling stock of the company, and to observe its nature and to know just the character of each of the cars in possession of the company, and then I think I can make the statement, that I have seen or did see during that time, every car that was in use on the property of all companies organized under the street railway law of the State of Michigan.

Having made this full and complete description of the physical property of the company, the next step was to obtain a complete record of the franchises and rights under which the companies did business, and to inquire especially into the conditions under  
663 which they did business, as to their rights in the streets, rates of fare or privileges of any kind, if they existed, and as to the duration of those rights.

After that the work consisted of an inquiry into the financial operations of the property, the examination of their books, and the questioning of the officers with regard to information concerning the operation. This information was further supplemented by published records such as the book used by Keane, Van Courtland & Company, of New York city, known among street railway men as the red book, that gives a short financial history each year of all the street railway companies doing business in the United States.

That in brief was the method of gathering information by personal inspection and examination of the property; after which the notes were all carefully type-written, and the computation as to the value of the physical property, and finally the market value of the entire property, which I gave as my opinion to the board.

Q. Did you also investigate the method of acquiring rights and franchises and the source of the rights and franchises and the municipalities by which conferred?

A. Yes sir, that came as a part of the final work.

The rights to do business within the confines of the municipalities of any assessment district in the State of Michigan, that were found to have been granted by that municipality or assessment district.

Q. Can you tell us what was the extent of the Interurban Street railway business in 1902, in the spring of 1902, in the State of Michigan?

A. The spring of 1902 saw the most advanced stage of  
664 what was then interurban business in Michigan, that is, up to date. There had been previous to that time comparatively little suburban mileage.

I do not remember the amount of interurban mileage that was completed in the fall of 1901, that first went into operation in 1902, but I recall the names of some properties and their mileage.

Q. Can you give us the names of of the different companies which were doing business and the date of their organization?

A. I don't think I can give you the dates of their organization, I haven't a record of it.

Q. Just the year of their organization then?

MR. BUTTERFIELD: That is objected to as incompetent.

A. I haven't that information with me; I can give it to you though.

Q. I understand that the business of interurban street railways in 1902 was practically new in the State of Michigan?

MR. BUTTERFIELD: That is objected to as leading and incompetent.

A. As I have already stated, yes sir.

Q. Now, how about the freight business at that time, was it extensive or was it limited?

MR. BUTTERFIELD: That is objected to as incompetent.

A. For answer to that question, I would say that I have here a description of some of of the equipment, or rather all the equipment used by some of the street railways of Michigan, and that description will serve to show the very small proportion of cars  
665 devoted to any kind of packing business in Michigan at that time.

Q. Give that so far as it relates to freight and package business?

MR. BUTTERFIELD: That is objected to as incompetent.

A. The Adrain Street Railway Company possessed of five cars, none of them adapted for the carriage of freight of any kind.

The Bay City Consolidated Street Railway Company, possessed 38 cars, two of which were used for construction; none of which were used for freight.

Q. Do I understand that both of these were urban railway companies?

A. No sir.

Q. Were those interurban companies?

A. Only to a certain extent; the Adrain is wholly within the municipality; the Bay City Consolidated Street Railway Company, in

the case of that company I may say it had a trackage agreement with the interurban branch of the Saginaw Valley Traction Company, which did have an interurban line between the cities of Saginaw and Bay City.

Q. The one which you have mentioned was confined to the city?

A. Yes sir, it had two lines to summer resorts.

The Detroit, Plymouth & Northville railway, which is a small line about 17 miles long, wholly in the country, between country towns, had but seven cars, none of which were devoted to the carriage of package freight.

The Detroit & Pontiac railroad, an interurban division of the Detroit, United railway, had one express car No. B. out of a total of about 16 cars.

666 As I remember it for the entire State there were about 1750 cars all told in the street railway service of Michigan up to the close of 1901. Of that number, fifteen, or approximately 15, were devoted to the combination business; they were combination closed and open cars. 24 combination closed cars and 33 express and baggage, that is wholly used for express and baggage, that is out of a total of 1750 cars; a little over four per cent. of all the cars in the State were devoted in any way to the carriage of express, mail, and baggage.

Q. Does the freight business, the business in the nature of a freight business conducted by the Interurban railway, differ in any particulars from that conducted by steam railways, and if so in what particulars?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. It does, yes sir. The regulations that I discovered as to the operations of the cars were such as to preclude the character of a business in the case of the street railway being the same as a freight carrier.

Q. You speak of contract and franchise regulations?

A. Yes sir, I am speaking of actual contract relations imposed by the district through which these companies did business.

Mr. BUTTERFIELD: That is objected to as incompetent.

Q. What are the differences if any in the nature of the business as to whether one is carried in car load lots and the other is merely a package freight?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. Practically no freight was carried in Michigan, during the time when I inspected these properties, in car load lots, by interurban carriers.

667 It was not bulk freight. The freight was required to be carried, if at all, usually during certain hours of the night. If allowed to be carried or permitted to be carried at any time during the day, it was usually at stated times, perhaps one car in the

morning, and one car in the afternoon, not to exceed two cars per day.

It can not be said that rough commodities like live stock or coal in car load lots, was permitted in any way to be transported over the lines, that is, I am speaking in general, as to the general character of the business. The outside of the cars was required in many instances to be neat in appearance.

Q. Was there any difference in the make up of the trains on the two different roads or systems?

A. I cannot say that I ever saw a freight train on an interurban road. I saw one car at a time, which was devoted to carrying baggage freight.

Q. Is it the practice to carry simply one car on the interurban roads?

A. Yes sir, it was at that time.

Q. What can you say as to the distance or length of haul?

A. The business of the interurban street railway so far as the length of haul is concerned, differed radically from that of the roads organized under the general railroad law, in that year, in that the business was purely local and confined wholly to the line of the interurban road as against the fact of car interchange on the steam carriers.

Q. Does that difference still exist?

Mr. BUTTERFIELD: That is objected to as incompetent.

668 A. I am unable to state at the present time.

Q. What can you say as to whether the interurban railroad in 1902 had traffic arrangements with the steam railroad, and there was an interchange of cars between the systems?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. Speaking in general I found no such relation to exist.

Q. Do you know of any instances where the railroad companies refused to make traffic arrangements?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. I do not remember the specific instance, but I remember that that did occur, a refusal on the part of the steam carrier to accept freight in car load lots by a road organized under the street railway law.

Q. Do you know whether it is possible for one steam railroad to enforce a traffic arrangement with another steam railroad?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. I understand that to be the law in the State of Michigan.

Q. Do you know whether that condition exists as between a steam and an interurban or electric railroad?

Mr. BUTTERFIELD: That is objected to as incompetent.



A. I know it did not exist in that time.

Q. Now, as to the acquiring of franchises by the interurban railroad, let me ask you how these franchises were acquired, whether from the State or from some municipality, or what is the practice?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. The practice was to acquire it from the municipality or township in which the street railway company desired to locate its property.

Q. Did you- examination indicate whether the contract or franchise contained a stipulation in regard to rates?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. Yes sir, I can go further and say, that I don't think any franchise of any corporation of importance within my observation that did not contain a stipulation as to rates.

Q. Now, is there any difference in the amount of the rate charged by the interurban road and the amount charged by the steam road?

A. There is, yes sir. Measured on a mileage basis, the rate of fare is lower considerably on the interurban line than it is on the steam car.

Q. Is that uniformly so?

A. It is uniformly so. The rates on the principal interurban divisions of the Detroit United railway, outside of the city of Detroit, run from one to one and a half cents per mile.

Q. Do you know whether the interurban rate exceeds one and a half cents a mile in any instance?

A. I don't know of any instance where it did, no sir.

Q. What is the usual and ordinary rate for steam railroads?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. The average rate of steam carriers per mile, during the calendar year 1901, exceeded two cents per mile, that is, the average for all railroads in the State.

Q. Is there any difference in the location of the interurban railway from the steam railway, as to whether one is in the street and the other is not?

670 A. The first interurban roads that were built in the State, the Rapid Railway system, and the Detroit, Ypsilanti and Ann Arbor railroad, were built in the street; the latter practice has been to acquire their own right of way.

Q. And what is the case when they approach and enter a city?

A. They are almost uniformly in the streets.

Q. Is there any difference between the two systems, the interurban and the steam railways, in the frequency with which stops are made to pick up passengers or freight?

A. In general, yes sir.

Q. What is the difference?

A. Well, as a comparison with through freight business on a steam

road, there is no through freight business on the interurban line as compared with the carriage of long heavily loaded trains of freight for long distances on the steam carrier.

Q. Speaking of both passengers and freight, what is the difference?

A. The main difference is constituted in the frequency of stops.

Q. On which line?

A. On the interurban or street railway lines.

Q. Is it the practice to stop wherever they can pick up passengers?

A. Not wholly so, no; in general, yes sir.

Q. At every crossing?

A. Yes sir.

Q. Do you know whether it is the practice of the interurban railway when using a street, to pay damages as an additional burden to the traffic of the street?

671 Mr. BUTTERFIELD: That is objected to as incompetent.

A. I never heard of such a case in my experience.

Q. Is there any difference as to the duration of the two corporations?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. The life of a street railway corporation is 30 years, that of a steam carrier perpetual.

Q. Have you made any investigation to determine whether it is the practice of steam railroads to organize for a perpetual existence when the statute permits?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. Yes sir.

Q. And is it the practice to organize for a perpetual existence?

A. Yes sir, and in answering yes, I mean a term of 999 years.

Q. Now, as to interstate business, is there any difference between the interstate business conducted by an interurban railway and by a steam railway, in the volume?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. There were but three companies organized under the street railway law, in the year 1900 that did any interstate business, one was the Twin City General Electric Company, between the cities of Ironwood, Michigan, and Hurley, Wisconsin. That company's line was in the street and carried no freight, doing a small passenger business.

Q. How long was it?

A. That whole line was not over five or six miles long.  
672 The other case was the case of the Menominee City Electric Light & Power Company, doing business between the cities of Menominee, Michigan, and Marinette, Wisconsin.

The total length of that company's line as I remember it was

about 8 or 9 miles. Their line was wholly in the street crossing a river between the two towns, on a public bridge. It did no freight business of any description.

The third and last case was the case of the Toledo, Adrain and Jackson Street Railway Company, which in the State of Michigan, is located wholly within Lenawee county, and its line runs from the city of Adrain through the villages of Blissfield, Palmyria, Riga, to a point at the State line near the town of Sulphano, Ohio; there as the line crosses into Ohio the road is known as the Toledo & Western Railway Company, and is organized under the general railway law of the State of Ohio.

Q. Do you know whether it is organized under a Michigan statute also?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. It was organized under the train railway act of the State of Michigan.

Q. Do you know whether it is the practice of the steam and inter-urban roads to interchange passengers by selling through tickets for each other?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. It was not at that time.

Q. Was it in 1902?

A. It did not come to my knowledge that such was the case.

Q. What was the practice with steam roads as between each other?

673 Mr. BUTTERFIELD: The same objection.

A. They did interchange to my personal knowledge.

Hearing here adjourned until morning.

674 Proceedings of March 26th, 1904.

"Q. Taking into consideration all of the elements of difference between the business of a street and a steam railroad company which you have referred to, are you prepared to say whether the two classes of companies are engaged in a similar or in a different kind of business?

Mr. BUTTERFIELD: That is objected to as incompetent.

A. I am prepared to say; yes, sir.

Q. What is your judgment about that?

Mr. BUTTERFIELD: The same objection.

A. That they are engaged in a different kind of business.

Q. Have you been engaged in a few years past in a way which would qualify you for valuing railroad properties?

A. I have.

Q. State what your experience has been?

A. Since the 24th of October in the year 1900, up to the present time, I have been engaged in no other occupation than that of valuing corporate property in the State of Michigan, chiefly railroad property, both street railways and roads organized under the general railroad law.

Q. Has your work been in the nature of an advisory capacity to the State board of assessors?

Mr. BUTTERFIELD: That is objected to as leading and incompetent.

Q. (Continuing:) And to the tax commission?

A. I have occupied and do occupy the position of consulting engineer to the board of State tax commissioners, and the State board of assessors of Michigan.

Q. State in detail what your duties in that position have been; what you have done in the way of investigating and reporting on the railway properties of Michigan, and their condition and their value?

675 A. In my examination in the early part of January, I think I detailed my connection with the Michigan railroad appraisal, as conducted in this State, from the latter part of 1900 and during the early part of 1901, and during yesterday's examination I detailed the work done after the spring of 1901 to the middle of the month of March in 1902; after that date and prior to the second Monday of April and the third Monday of May, speaking in general terms, it became my duty under orders from the State tax commission, to address certain boards of supervisors in this State, with regard to the valuation of street railway property located within the various assessing districts over which they had control. The two days, the second Monday of April and the third Monday of May, was given because of the fact that personal property may be not checked upon the rolls by the local assessors, speaking in general terms, after the second Monday of April, nor real estate changed after the third Monday of May.

The tax commissioners and myself were engaged in that work, informing the boards of supervisors as to the valuations of street railway property up to that time, the third Monday of May, when they could last affect their own rolls with their own judgment, assisted by such information as we had been able to give them, and after the third Monday of May reports had been received from every assessing officer of the State as to what he had finally assessed the street railway property within his jurisdiction at, and a complete system of reviews was held by the board of State tax commissioners, with the design of placing these properties upon the rolls in case the local supervisors had not done it, at the figures that they believed to be the cash value of the property. This work continued until the second Monday of October, at which time the power of the State board of tax commissioners for the current year, to change valuations upon the local rolls ceased.

676 Q. Now, address yourself particularly to the connection which you had with the valuation of railway property, and that will be a sufficient answer?

A. From the second Monday of October 1902, on until the 15th day of December of the same year, the board of State tax commissioners undertook its duties as a State board of assessors *ex-officio*, under act 173, and I acted in the capacity of advisor to them in the matter of the first valuation of the railroad property under this law. The law provided that the reports which the railroads should make to the State board of assessors should have been completed by the 30th day of June of that year and forwarded to the office of the board at Lansing, but owing to some delay in getting out the blanks, the reports did not begin to come in until the latter part of July, but with such reports as had come in by the second Monday of October, the board started its work of valuing the railroad and other corporate property subject to assessment under this act.

For the purpose of making the information which these companies should give to the board as full and complete as possible, the blank itself was designed, after the first thirteen questions which the law had provided, and in accordance with the 14th question, which provided for such other information as the board might require, the blank was formulated substantially along the lines of the reports of railroads to the Interstate Commerce Commission; the law however required the companies to report as of the fiscal year ending on the second Monday of April, which in 1902 was the 13th day of that month. Some of the companies were unable to report as of that date, and reported, some of them, as of the 30th of April, some as of the 30th of June, and in one or two instances I think, though I cannot remember exactly, as of the first of April.

677 That was the starting point of the information which the State board of assessors was to make the first assessment of the railroad properties of Michigan, in conformity with the act 173 of the public acts of 1901.

In order to get such other information as seemed necessary, that would throw any light upon the question of the history of the properties and their operations in past years, reference was had also to the reports of the companies to the railroad commissioner of Michigan, the reports of the companies to the Interstate Commerce Commission at Washington, the reports of the railroad companies to other and adjoining States, the reports of the operations of the companies made by H. V. & H. W. Poor, of New York city, in what is known as Poor's Manual of Railroads, and any other general information which could be obtained, and it became my duty to study and abstract this information and present it to the board at their session in order that they might have the information laid before them in concrete shape.

The board also visited the city of Detroit and held a number of its sessions in that city, for the purpose of being in a position to call before them for preliminary hearing and information, certain of the

officials of some of the larger railroads, whose headquarters were there or who were located there, and at such preliminary hearings, the representatives of the Michigan Central, Pere Marquette, Grand Trunk, Lake Shore, Ann Arbor & Northwestern railroads, were present.

Q. You were also present?

A. I was present at every session of the State board of assessors held for the purpose of valuing the railroad properties, except the final two sessions, to which I was not admitted.

The duties which I performed were not confined wholly to the giving or interpreting information, but also for advising the board in an expert capacity, as to the value of the properties themselves  
678 under consideration, and such opinions I gave.

Q. Can you detail the nature of the examination you made before giving those opinions?

Mr. BUTTERFIELD: That is objected to as incompetent and irrelevant.

A. It consisted of an examination of all the records which I have mentioned, together with the records and results of the Michigan railroad appraisal, covering the work of Professor Cooley and Professor Adams, and such work as had been done by ex-tax commissioner, Robert Oakman, with regard to the earning power of railroad properties, or I should say with regard to the valuation of railroad property, by means of their earning power, and the work projected by ex-tax commissioner, Milo D. Campbell, with regard to the value of property by means of stock and bonds.

After the study of that information, and through and as a result of the knowledge I had gained by my own experience, I rendered my opinion.

Q. Let me ask you if you have since that time made a careful and detailed valuation of the properties of the Pere Marquette and Michigan Central, for the purpose of giving testimony in this case?

A. Yes, sir.

Q. How did the figures which you have reached in the valuation which you have made here, compare with the recommendations which you made to the State board of assessors?

Mr. BUTTERFIELD: That is objected to as incompetent and irrelevant.

A. They are the same. I have no reason on further study of the information which has been at my command, to change my idea of the value of these properties, and my idea is the same now as it was when I gave my opinion to the board.

679 Q. What was the plan of valuation followed by the State board of assessors, and how was the plan devised?

Mr. BUTTERFIELD: That is objected to as incompetent and irrelevant.

A. Do you mean for finding the final valuation?

(Last question read.)

A. As I have already stated I laid this information before the board in their sessions.

Q. Whether they followed the Grosscup plan, or stock and bond plan, or the inventory plan, or a combination plan of all three, or what they had in their mind, or is that shown by the report they made themselves?

A. I think that is shown by a report that they made themselves, but they did so consider all plans so-called.

Q. That is in substance the same plan that you have followed, is it?

Mr. BUTTERFIELD: That is objected to as incompetent, irrelevant and leading.

Q. A combination of all the different methods which have been mentioned, the inventory plan, the stock and bond plan, and the earning power &c.?

A. Yes, sir.

Q. State the plan of valuation which you have followed and the conclusions which you have reached?

Mr. BUTTERFIELD: That is objected to as incompetent and irrelevant.

A. The general plan of a valuation of a railroad property as I conceive it, is based upon the same practical kind of a consideration of all features or elements surrounding the property, that anyone would have to have if they were going to investigate that property to determine the value for ordinary purposes of sale.

680 In such an investigation it would be necessary to examine the property from its physical standpoint or to have such knowledge that you could be reasonably well satisfied as to its physical condition, to know the amount of its stock and bonds, and current liability, whether the latter item was small or large and of what it consisted, whether it was likely to be funded or reduced by the ordinary operation of the road; to know whether the interest and dividends had been paid upon the securities; to examine the income account of the road and its operating account, over a series of years; to know whether at the particular time of your investigation the operation was the result of an extraordinary condition of the times or not; to examine the operating expenses with reference to the matter of inclusion of permanent improvements; to know in short whether permanent improvements were being made on the property; that is, extraordinary repairs and renewals; to see, if such permanent improvements had been made, to what account they had been carried, which in a measure would indicate the relative prosperity of the road with other roads; to note the cost of construction and present physical value of the physical properties; to know the traffic condi-



tions under which the road operates and has operated in the past; its geographical relation to other properties, and finally from the result of all investigations with regard to the nature of the property, to arrive at an amount which would be the selling price of that property—the usual selling price at the time and place under consideration.

That is a long answer, but I think I can shorten it by explaining that I mean that in order to value a railroad property, you must consider every feature that surrounds it before you could definitely arrive at the value of the property.

In regard to the different plans that have been evolved, I would say that through any one of them, if given proper consideration, you might arrive at the cash value of the property.

I have preferred, since it has been my fortune to observe and to have to study all these plans, to a certain extent, to look them all over and apply them all in different ways, in order to reach my opinion.

Q. And you did as I understand investigate all these elements and conditions which affected values before reaching your final conclusions?

A. Yes, sir.

Hearing here adjourned until morning.

682 CHARLES B. MERSEREAU, being called as a witness on behalf of the complainant and being first duly sworn by the examiner to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. BUTTERFIELD:

Q. What is your age?

A. 38.

Q. Where do you reside?

A. Manistique, Michigan.

Q. What is your business?

A. Cashier of the Manistique bank.

Q. Do you hold any official position with any lumber company?

A. Yes sir.

Q. What is the name of that company and your position?

A. Secretary of the Thompson Lumber Company, Limited.

Q. What is the business of the Thompson Lumber Company, Limited?

A. Why, the only business that we have been engaged in since I have been connected with it was running a railroad.

Q. How long have you been connected with it?

A. Since the forepart of November.

Q. Last?

A. Yes sir.

Q. When was the company organized?

A. Just about that time, I think it was about the 5th of November that we bought it and we incorporated it right away.

Q. It is a limited partnership is it?

A. Yes sir.

Q. Where does this railroad run or perhaps I should say extend?

A. It extends from south Manistique to Thompson and then from Thompson up north I guess it is about 25 miles; I think there is about 28 miles of track.

683 Q. Is that the railroad that was formerly owned and operated by the F. and F. Lumber Company?

A. Yes sir.

Q. How did your company acquire that road?

A. Purchased it.

Q. Does your company in operating that railroad carry passengers and freight for hire for other people?

A. Yes sir.

Mr. KNAPPEN: We object to it as not material and secondly as not proper rebuttal testimony.

Cross-examination by Mr. KNAPPEN:

Q. The F. and F. railroad is the Fuller & Friant road.

A. They are incorporated as the F. and F. Lumber Company, Limited, that was the full title, I suppose it was made up of Mr. Fuller and Mr. Friant, they were both interested in it.

Q. That road had been operated up to the time of this purchase in connection with the Fuller and Friant Lumber Company, had it not?

A. Yes sir.

Q. And the Fuller & Friant Lumber Company was engaged in the general lumber business?

A. Yes sir.

Q. Do you know when this road was built?

A. I know it has been built a good many years, it was built before they bought it, before they bought the property, the Delta Lumber Company I think built it.

Q. So long as the Fuller & Friant Company was operating they were using this railroad in connection with their business?

684 A. Yes sir, they used it in connection with their business.

Q. You spoke of the ownership of this road being now in the Thompson Lumber Company, Limited. Is there also a Thompson Lumber Company?

A. Well I don't know, not that I know of, there is not there. The Thompson Lumber Company Limited is our company, there may be some other company somewhere else.

Q. Have you with you the articles of association of the Thompson Lumber Company Limited?

A. No sir.

Q. Have you seen the articles?

A. Yes sir.

Q. I suppose they are on record in the State offices?

A. Yes sir.

Q. That company is organized, is it not, for the purpose of doing a general lumber business, manufacturing lumber?

A. I think that is one of the things stated in the articles of incorporation.

Q. Does the Thompson Lumber Company Limited succeed any other corporation or association or partnership?

A. Well succeed, of course it bought this outfit of the F. & F. Lumber Company, and they succeed them as a new company of new people formed.

Q. Who are the people interested in the Thompson Lumber Company?

A. Fred Cooper, George Cole, Fred Miller, William Bonaface, T. McNamara and myself.

Q. Are any of these people engaged in the lumber business either individually or as members of corporations or associations?

A. Yes sir, I am engaged in the lumber business myself but not at that point.

Q. Of what company or association are you a member?

685

A. It was not a company, it was individually, and Mr. McNamara and Mr. Cooper are interested in the lumber business some.

Q. As individuals or partners?

A. They have a lumber business they are conducting as partners, Mr. Miller and Mr. McNamara are.

Q. Are they interested in a corporation or association?

A. No sir.

Q. The other gentlemen you mentioned, are they interested in lumbering operations.

A. The Bonaface Brothers are lumbermen yes sir.

Q. In that firm name?

A. Yes sir, it is a co-partnership of two brothers.

Q. Who is the first one you name?

A. George Cole.

Q. Is he interested in it?

A. No sir, he is not engaged in any lumbering.

Q. Is he a member of any lumbering corporation?

A. No sir.

Q. You say this company was formed last November?

A. Yes sir.

Q. As a partnership association limited?

A. Yes sir. At that time there were only three of us that incorporated, since that we have sold some of the stock.

Q. The business of that road is principally carrying forest products?

A. Yes sir.

Q. Largely I suppose in connection with the mills in which the various members of the association whom you have named are interested?

A. No, not at all, that is I say "not at all." I don't know but what Mr. Miller might be freighting and running supplies over the road. We carry principally for the Chicago Lumber Company now, another corporation entirely.

686 Q. But it is principally forest products you say?

A. Yes sir.

Q. You haven't built any new road?

A. Well we have to build more or less right along to get into the product.

Q. Spurs you mean?

A. Yes sir.

Q. You have not built any extensions of road?

A. No sir, not any great distance.

Q. I suppose the passenger business is very limited?

A. It is not very heavy.

Q. It has always been practically what would be called a lumbering railroad so far as the nature of its business is concerned?

A. Yes sir, I suppose that is what they will call it, a lumbering road—a logging road.

Redirect examination by Mr. BUTTERFIELD:

Q. Your company bought from the F. & F. Company not only the road but its equipment, I understand.

A. Yes sir.

Q. And it is that equipment that you are now operating with?

A. Yes sir.

Q. Where do the passengers ride that are carried on your road?

A. In the caboose generally.

Q. Was that caboose bought from the F. & F. Company?

A. We bought it from them.

687 Q. They had one?

A. Yes sir.

Recross-examination by Mr. KNAPPEN:

Q. You say the passengers generally ride in the caboose. When they do not ride in the caboose where do they ride, in the freight cars or on the engine?

A. There is occasionally a train that don't have any caboose and they ride where they get a chance.

Q. In other words, you do not carry any regular passenger cars?

A. No sir.

Q. I suppose your cars generally are flat cars or gondola cars?

A. Logging cars and some box cars.

## Redirect examination by Mr. BUTTERFIELD :

- Q. How are the passenger fares collected ?  
A. By the conductor.  
Q. What is the conductor provided with to evidence the payment of a fare ?  
A. They have a system of cash slips that they tear off that shows the amount paid.  
Q. What is called a duplicate ?  
A. I don't remember which system it is but I know it shows the amount, and there are different systems.  
Q. But something which is given to the passenger and something which is turned into the office ?  
A. Yes sir.  
Q. State whether or not a collection is made from all passengers that ride so far as you know.  
688 A. Why yes sir, that is the instruction and the intention, except a few that have passes.

## Recross-examination by Mr. KNAPPEN :

- Q. When did you adopt that system of collecting fares ?  
A. Well I don't know I am sure. I think it was in vogue before we purchased.  
Q. Do you know that of your own knowledge ?  
A. No sir, I don't know whether it was or not.  
Q. Do your trains run on fixed accurate schedule ?  
A. Well they run as near as they can, they are not always very regular.  
Q. Do you have a schedule of arrival at and departure from stations at fixed times ?  
A. We haven't any printed schedule that I know of.  
Q. You don't hold out any printed schedule to the public ?  
A. No sir, I don't think so.  
Q. So far as you know do you have any fixed schedule time for arriving and departing from the various stations on the road ?  
A. We intend to have, yes sir certain times.  
Q. Well, do you have a fixed schedule of times ?  
A. Well so far we have been bothered a good deal in getting it down to fixed times.  
Q. In other words, you haven't got there yet ?  
A. We haven't been regular.  
Q. Have you reached that point where you have really made out a fixed schedule ?  
A. Well I could not say as to that. I know they try to  
689 run on schedule time, but it has been hard work so far ; we run over another road a part of the way from South Manistique in and they delay us a good deal, we have had hard work to get it down.

Q. Q. Do you know of the existence of any fixed schedule of time of arrival at and departure from the various points on your road?

A. I know they have a time they are supposed to arrive and depart, they have a schedule they are supposed to run on, but it has been so far——

Q. (Interrupting). How many trains a day each way do you make throughout the year?

A. Well we expect to run two trains through from clear up in the woods clear to Manistique, and we run some other trains from up in the woods to Thompson that run irregularly.

Q. Do you do that the year round?

A. We took hold of it in November; we didn't run the year round this winter.

Q. How much of the time did you succeed in running this winter?

A. Well I could not say exactly. We had a break down and then we got into trouble with the other road, we had a contract and they tried to raise the rates and we closed down but we probably would have had to close down anyway a part of the time on account of the severe winter?

Q. So you have not run very regular this winter?

A. No sir.

Q. Do you suppose you have run on an average one half the days that have elapsed since last November?

A. No sir, we closed down, it must have been for two months entirely that we didn't pretend to run.

Q. Aside from the two months you didn't run every day?

A. Well there were days that we didn't run?

690 Q. What proportion of the days did you run apart from those two months that you say you shut down altogether?

A. Well I couldn't say just what proportion.

Q. Can you give us a fairly accurate estimate?

A. Before we closed down on account of the trouble with the railroad, we had three locomotives and our principal one broke a tire and we had to send to Pittsburg to get one and that laid us up I think for something like three weeks. While we did some other work hauling products to Thompson we didn't run the logging trains through to Manistique, as we call it.

Q. Then could you answer with a fair degree of accuracy what proportion of the time apart from the two months you shut down entirely, you ran trains?

A. Well do you mean deducting the three weeks that we had the accident and were not pretending to run?

Q. I am willing to deduct that too and take *thereat* of the time.

A. Well outside of that we missed very few trains; some days we made one trip instead of making two.

Q. When did you resume running the trains?

A. The regular running of those logging trains they expected to resume a year ago last Monday, whether they did or not, I could not say.

Q. Then so far as your personal knowledge goes they have been shut down since when?

A. Well I think it was about the middle of—that is I am speaking of these trains that run through *the* Manistique—the latter part of December.

691 Redirect examination by Mr. BUTTERFIELD:

Q. Up to the time you had the accident which you have spoken of the trains did run I understand you with reasonable regularity?

A. Yes sir.

Q. During this time that the road was as you call it shut down what portion of it was in operation?

A. Well, during the time of the accident it was in operation from Thompson up north to the lumber camps.

Q. How far is that?

A. Well it is something over 20 miles.

Q. The portion that you refer to when you say it was shut down was between Thompson and Manistique?

A. Yes sir, those trains didn't run when we were broke down.

Q. The intention of the company is I take it to resume the operations and run with regularity.

Mr. KNAPPEN: That is objected to as immaterial and incompetent.

Q. How far is it from Thompson to Manistique?

A. About 7 miles.

(Hearing here adjourned until 2 o'clock.)

692 JOHN J. HUBBELL, sworn as a witness for defendant, testified:

I reside in Manistee, Mich. Am 59 years old. My business is surveying and civil engineering. I began that business in 1869 and have been at it continuously since 1887. Before that time, I had had experience in both land, topographical and railroad surveys, and in private practice. In 1887, I was appointed chief engineer of the Manistee, & North-Eastern Railroad Company, which position I still hold. I was connected with the Michigan railroad appraisal in 1900.

“Q. Do you know about the Crawford & Manistee River road?

A. I know something of it.

Q. Where is that situated?

A. That is situated about what we call jam-1 on the Manistee river. I furnished a map showing the location of it. I intended to with all the roads and I think I did of that.

Q. Do you know whether or not that road has been recently incorporated?

A. It was incorporated at that time. I found in the office the reports that they had been making to the railroad commissioner and



I judged from that that it was incorporated. Of course, I didn't call to see their articles of incorporation, I was so informed at the office and looked over their annual report that was made to the railroad commissioner.

Q. What kind of a road was that?

A. Well, it was a narrow gauge road; I guess you have got it here somewhere. You will find it in 8 O, volume 9, page 572.

Q. Do you know what the name of it was when you made the inspection?

A. It is the Crawford & Manistee river, that is the way I have it designated here.

Q. What kind of business did that road do?

693 A. A. Strictly logging, nothing else.

Q. Didn't it do any passenger or freight business?

A. I never heard of its doing any.

Q. Do you know a man named Wentz, up there.

A. William Wentz, yes, sir.

Q. And James Dempsey?

A. Yes, sir.

Q. Did they have anything to do with this road?

A. William Wentz and James Dempsey were the principal stockholders of the Manistee Lumber Company and the Manistee Lumber Company were supposed to be the owners of this road and it was in their office that I found the office data.

Q. How long is that road, do you remember?

A. 10 miles.

Q. Was that one of the roads that you put a value upon?

A. I don't think so. It doesn't seem to be in the list of those that I included.

694

Proceedings of January 14, 1904.

JOHN J. HUBBELL being recalled on behalf of the defendant testified as follows:

Direct examination by Mr. WYKES:

Q. You are acquainted with the Louis Sands logging road?

A. I am.

Q. Where is it located?

A. Well that is up on the Manistee river. I think the tracing shows in my report but in common language we call it up above jam-1.

Q. It begins at jam-1?

A. Very near there, where they dump their logs in the river and runs northerly up through the country, I have forgotten the names of the counties, something like 30 miles.

Q. Have you ever been over the land?

A. Not all of it. I never traversed the whole of it, I have been over a portion of it.

Q. How does it end at the northerly extremity?

A. It ends at some camp up in a swamp or something of that kind; the end varies, they pull it up and run it over into this bunch of timber and that bunch of timber.

Q. How much of the line is permanent, do you know?

A. Well I should say perhaps the lower twenty miles has not shifted for some years, that is my recollection.

Q. Do you know what the total mileage is?

A. Well I could tell. My recollection is it is about 30 miles.  
695 Q. Are there any settlements on it whatever?

A. Well very little, it is pretty nearly cut stump land with very little settlement.

Q. Now as to the use to which it is put, can you describe that for us briefly.

A. So far as I know, exclusively logs. There are one or two cabooses or combination or box car or something of that kind for taking supplies up from the junction; it crosses the Kalkaska branch of the Pere Marquette and there is a junction there and they do a little freighting for their own camps, that is all that I understood at that junction; they ship their supplies from Manistee up on the Kalkaska branch to that junction and then they take them on up their own road to their camp for that purpose. I don't remember just the number of cars but it seems to me there are two, or something like that, of very cheap cars.

Q. That is the limit of their business, their own private hauling?

A. So far as I know, they do nothing for others.

Q. Is the road so located that they could do a general business for others, taking into consideration the surrounding territory.

A. For other people.

Q. Yes sir.

A. They might haul logs for other people.

Q. And do a general railroad business?

A. I don't think so. I don't think there is enough timber left there along the line to pay.

696 Q. Now as to their equipment, have they any passenger coaches?

A. No sir, not that I found out or discovered.

Q. What have they?

A. Well I prefer to refer to my report written fresh while I was on the ground to answer; whether it is a Russell or a Butterworth & Lowe it is a logging car with bunks.

Q. How many of those have they?

A. You will find it in my report.

Q. Do you know anything about the motive power?

A. Yes sir, I looked over the motive power; it is one of the roads I guess I was the only fellow that saw.

Q. Do you know without referring to your notes?

A. No sir; I wouldn't like to answer those questions from mem-

ory. My recollection is two, and it might be three locomotives that they had.

Q. It would not be more than three.

A. I don't think so. I think it was two.

Mr. WYKES: That is all.

Mr. BUTTERFIELD: We have no cross-examination.

697

DETROIT, MICHIGAN.

Proceedings of July 2, 1904.

Mr. KNAPPEN: I offer in evidence a certified copy under the seal of the secretary of state of Michigan, the articles of association of the Thompson Lumber Company, Limited.

Mr. BUTTERFIELD: That is objected to as irrelevant.

Mr. KNAPPEN: It reads as follows:

MICHIGAN, DEPARTMENT OF STATE, {  
Lansing. }

I, Charles S. Pierce, deputy secretary of state of the State of Michigan, hereby certify that the attached sheets of paper contain a correct transcript of the articles of association of the Thompson Lumber Company, Limited, recorded in this office on the sixteenth day of November, 1903.

In witness whereof I have hereunto attached my signature and the great seal of the State, at Lansing, this thirty-first day of May, nineteen hundred four.

[SEAL.]

CHARLES S. PIERCE,  
Deputy Secretary of State.

698 Articles of Association of the Thompson Lumber Company, Limited.

We, the undersigned, Fred Cooper, Charles B. Mersereau, and John H. Cole of Manistique, Michigan desiring to become associated under the provisions of chapter 160 of the Compiled Laws of the State of Michigan of the Year 1897 the same being act No. 191 of the Session of Laws of Michigan of the Year 1877, entitled "An act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the association except under certain circumstances," and acts amendatory thereto, do hereby make, execute and adopt the following articles of association, to-wit:

#### Article I.

The name of the persons hereby associating themselves together to form this association are as follows: Fred Cooper, Charles B. Mersereau and John H. Cole.

## Article II.

The amount of capital of said association subscribed for by each is the sum of twenty thousand dollars (\$20,000).

## Article III.

The total amount of capital of this association is the sum of sixty thousand dollars (\$60,000) and the same is to be paid as follows:

699 Thirty five thousand dollars (\$35,000) in cash, contributed equally by each partner, all of which is now paid and the balance twenty-five thousand dollars (25000) to be paid on or before one year from this date.

The capital stock subscribed shall be subject to the respective provisions of sec. 4 of said act as amended.

## Article IV.

The character and nature of the business to be conducted by this association is the general lumbering, logging and mercantile business and the purchase and sale of real estate and forest products and the location of the same shall be at and in the vicinity of the township of Thompson, county of Schoolcraft and State of Michigan.

## Article V.

The name of this association shall be "The Thompson Lumber Company, Limited."

## Article VI.

The contemplated duration of this association shall be for the period of twenty years.

## Article VII.

The names of the officers of this association selected in conformity with the provisions of said act are as follows: Managers—Fred Cooper, Charles B. Mersereau and John H. Cole, of whom Fred Cooper shall be chairman, C. B. Mersereau, the secretary and John H. Cole the treasurer.

## Article VIII.

The capital stock of this association shall be divided into six hundred (600) shares of the par value of one hundred dollars (\$100) per share.

700 In witness whereof we, the parties hereby associating for the purpose of giving legal effect to these articles hereunto sign our names this tenth day of November A. D. 1903.

FRED COOPER.  
CHAS. B. MERSEREAU.  
JOHN H. COLE.

701 STATE OF MICHIGAN, }  
Schoolcraft County, } ss :

On this tenth day of November A. D. 1903 before me a notary public in and for said county personally appeared Fred Cooper, Charles B. Morsereau and John H. Cole, to me known to be the persons named in and who executed the foregoing instrument and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

C. W. DUNTON,  
Notary public.

My commission expires Dec. 9th, 1906. [SEAL.]

Recorded November 16, 1903.  
B. & V.

702 Mr. KNAPPEN: In connection with the testimony of Prof. Cooley, as to his physical valuation, right-of-way maps filed in the office of the commissioner of railroads were referred to by him as data from which certain information was taken. Those have not been heretofore formally offered in evidence, and we would like to understand that those are in evidence for reference of either party, if desired.

Mr. BUTTERFIELD: Do you offer them now in evidence, is that the idea?

Mr. KNAPPEN: Why, yes, sir.

Mr. BUTTERFIELD: They are objected to on the ground that they are incompetent and irrelevant and not proper sur-rebuttal.

Mr. KNAPPEN: I suppose subject to that objection they are admitted.

Mr. BUTTERFIELD: I suppose subject to that objection they can go in.

Mr. KNAPPEN: As I understand it, there is no objection raised to our referring to the maps subject to the objection above noted, without having the maps to offer here and marked, that is correct, is it?

Mr. BUTTERFIELD: That is so.

Mr. KNAPPEN: I offer in evidence a certified copy authenticated by the seal of the register of deeds for Kent county Michigan of the articles of association of the F. & F. Lumber Company, Limited.

Mr. BUTTERFIELD: I object to it as irrelevant and incompetent, not proper sur-rebuttal.

703 (Paper referred to marked Exhibit 74, July 29, 1904, and reads as follows:)

## Articles of Association of F. and F. Lumber Company, Limited.

Received for record, December 2nd A. D. 1898, at 10 o'clock a. m.

SCOTT GRISWOLD, Register.

The undersigned, desiring to form a partnership association limited, under the provisions of chapter 79 of Howell's Annotated Statutes, of the State of Michigan, and the amendments thereto, for the purpose of conducting a lawful business hereinafter described, and contributing capital thereto, which capital shall alone be liable for the debts of such association, do hereby enter into, sign and acknowledge this statement in writing, and do hereby agree as follows:

1. The names of the persons uniting in this agreement are T. Stewart White, of Grand Rapids, Michigan, who has subscribed to the capital of said association \$60,000.00; Thomas Friant of Grand Rapids, Michigan, who has subscribed to the capital stock of said association \$30,000.00. and Philo C. Fuller, of Grand Rapids, Michigan, who has subscribed to the capital of said association \$45,000.00.

2. The total amount of capital of said association is the sum of one hundred and thirty-five thousand dollars, which for convenience is divided into 1350 shares of one hundred dollars each, and \$25,000. of said stock is to be paid in cash to the treasurer of the association within fifteen days from the date of these articles, \$60,000. November 1, 1899, and \$50,000. November 1st 1900, in cash.

3. The character of the business to be conducted is the purchase and sale of timber, timber lands, logs and forest products and  
705 the manufacture and sale of forest products; the operating of necessary camps, mills, railroads and stores for the proper conducting of a general lumber business and doing such other acts as shall be incident to the general business of the manufacture and sale of lumber, and such operations are to be carried on in the State of Michigan.

4. The principal office of said business is located and fixed and is to be maintained in the city of Grand Rapids, Kent county, Michigan.

5. The name of said association is to be and is F. & F. Lumber Company, Limited.

6. The duration of said association is fixed at the period of 20 years, commencing at the date of this agreement.

7. There shall be upon the execution of these articles, three managers of said association, and the names of the managers of said association selected in accordance with the provisions of said act, and who are to hold office until the first annual meeting of said com-

pany, are, T. Stewart White, Thomas Friant, and Philo C. Fuller, and it is further agreed that said board of managers may be increased to four at any time upon a vote of the board of managers herein provided for.

8. From among these managers, Thomas Friant, has been selected as chairman, T. Stewart White as secretary, and T. Stewart White as treasurer.

9. And we the persons above named do hereby enter into this agreement and do respectively subscribe for the amount of the capital of said company as above stated, and agree to pay the amount of our several subscriptions to the treasurer of said company in accordance with the provisions of the foregoing articles.

706 In testimony whereof, we sign this instrument at the city of Grand Rapids, Kent county, Michigan, this first day of November 1898.

T. STEWART WHITE.  
THOMAS FRIANT.  
PH. C. FULLER.

(U. S. rev. st'p 10 cents 11/1/98. Z. S.)

STATE OF MICHIGAN, }  
County of Kent, } ss:

On this first day of November 1898, personally appeared before me, a notary public, in and for said county, the above named T. Stewart White, Thomas Friant, and Philo C. Fuller, all to me personally known to be the persons described in and who subscribed the foregoing articles and severally acknowledged the execution thereof as their free act and deed and for the purposes and intents therein specified.

[NOTARIAL SEAL.]

ZENA SLAYTON,  
Notary Public, Kent County, Michigan.

STATE OF MICHIGAN, }  
County of Kent, } ss:

Register's Office.

[SEAL.] I, Frank J. Cook, register of deeds of Kent county, Michigan, do hereby certify that the within and foregoing is a true copy of the original record of articles of association, recorded the 2nd day of December A. D. 1898, at 10 o'clock  
707 a. m. in the register's office for the county of Kent, in Liber 11 of Miscellaneous Record, on pages 479 & 480, and that the same has been compared by me with the original record in my office, and is a correct transcript therefrom, and of the whole of such original.  
Witness my hand, this 7th day of July A. D. 1904.

F. J. COOK,  
Register of Deeds.



On the back is endorsed the following:

"Certified copy of articles of association of F. & F. Lumber Company, Limited."

708 GLENN L. WILLIAMS, being called as a witness on behalf of the defendant and being first duly sworn by the examiner to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. WYKES:

Q. How old are you?

A. 26.

Q. Where do you reside?

A. Do you mean my legal residence?

Q. Yes sir.

A. Ionia.

Q. What is your present occupation?

A. Stenographer for the State tax commission and the State board of assessors.

Q. How long have you been thus employed?

A. About 2½ years.

Q. And in that position what is your work principally?

A. The principal part of the work is taking testimony at reviews held by the State tax commission and reviews on the railroad assessments held by the board of assessors.

Q. When did you begin taking the testimony of those reviews?

A. The latter part of July two years ago.

Q. That would be in July of what year?

A. Either the first of July or August the 1st.

Q. July 1901?

A. Yes sir.

Q. And that has continued through the last year?

A. During review periods, yes sir.

709 Q. How is the work of review conducted—usually by one member or by more than one member?

A. That is owing to circumstances; sometimes one and sometimes more, sometimes the whole board.

Q. Ordinarily where you appear is the whole board present?

A. No I hardly think that they have all been present, except the first year they were in the work that I did.

Q. Is it the purpose of the board to have a typewritten transcript of each meeting, each review?

A. No sir, not necessarily.

Q. With what commissioner have you been usually employed—whose reviews have you usually taken?

A. Well no one in particular, just whatever one happened.

Q. And you have taken reviews for all of them?

A. Yes, sir.

Q. Can you tell how many reviews you have reported approximately since your employment in this capacity?

A. No, I couldn't tell how many reviews.

Q. Were there a good many?

A. Several, yes sir.

Q. By that do you mean fifty?

A. Oh I should think there was fifty, possibly more, taking all kinds of reviews.

Q. Possibly a hundred?

A. I wouldn't want to say there was 100, there might be and there might not.

Q. Have you examined your notes taken on those reviews for the purpose of ascertaining the character of the questions asked and the character of the answers given; have you examined your notes recently?

A. Yes sir.

Q. Let me ask you if you examined with special reference to determining how many times at those reviews supervisors testified that they willfully and intentionally undervalued.

Mr. BUTTERFIELD: I object to it as incompetent and irrelevant.

Q. I am asking you if you examined for the purpose of ascertaining that fact?

A. Yes sir.

Q. With special reference to determining how many times?

A. I examined with the idea of finding out how many times the supervisors had said they assessed at less than cash value, I don't know that they necessarily said "willfully".

Q. How many times did you find it?

Mr. BUTTERFIELD: I object to that as immaterial, irrelevant and incompetent.

A. During what period?

Q. During the period previous to 1902.

Mr. BUTTERFIELD: The same objection.

A. Previous to the reviews?

Q. Previous to the assessment by the State board of assessors and the fixing of the average rate of 1902.

Mr. BUTTERFIELD: The same objection.

A. Well I have only found in two different places I think it is eight men—eight or ten, I couldn't tell exactly without looking at my notes.

Q. That is at only two different reviews?

A. Two different reviews, yes sir.

Q. Do you mean to say you found the testimony of eight different men that said they had undervalued?

A. I think it is either eight or ten.

Q. Did any of those men say that they had willfully and intentionally undervalued?

A. I don't know as they expressed it in those terms.

Q. Willfully or intentionally?

A. No, I don't know as they expressed it in those terms either.

Q. I ask you if from your examination of your notes you can state whether it was the practice of the tax commissioners or any of them to ask the direct question whether a supervisor had undervalued.

Mr. BUTTERFIELD: I object to it as immaterial and incompetent.

A. Sometimes it was asked and sometimes it was not.

Q. Was it asked frequently or very seldom?

Mr. BUTTERFIELD: The same objection.

A. It was not asked very frequently during that year.

Q. Let me ask you if it was not usually assumed by the tax commissioners, basing their judgment on the field man's report that there was an undervaluation, and the question was framed in this way: "If there is an undervaluation have you attempted to treat everybody equally?"

A. That question has been asked.

Q. Isn't that the form that their questions usually took?

Mr. ANGELL: I object to it as immaterial and incompetent.

A. No, I think the question usually asked is without reference to whether they have underassessed or not. They are asked  
712 whether they assessed all property equally.

Q. And were not asked whether they had underassessed or not?

A. I don't think it is very often asked that way.

Q. Can you tell me who the eight men were that said they had undervalued?

A. I cannot give the names; I can tell the places where those reviews were.

Q. You don't remember finding the testimony of any supervisor who said that he had intentionally and wilfully undervalued?

Mr. ANGELL: I object to the question as leading, immaterial and incompetent.

A. I don't remember its being stated in that way, that they wilfully and intentionally did it.

Cross-examination by Mr. ANGELL:

— You have heard the testimony in this case of the State tax commissioners.

A. Not to amount to anything.

Q. Do you know what they testified to in relation to this matter of supervisors admitting undervaluation to them?

A. I cannot say that I do.

Q. Were you present at all the interview- with supervisors which the tax commissioners held?

A. No sir, I don't think I was at all of them.

Q. If their testimony should be in fact that a large number of supervisors had admitted to them undervaluation, you wish to be understood as contradicting it?

713 A. In what way do you mean?

Q. The difference between ten and a very large number of supervisors.

A. Do you mean the testimony given under oath or do you mean statements made to the members of the board?

Q. Either way.

A. Well which way?

Q. Either way.

A. I can't say anything in regard to what supervisors may have told members of the board.

Q. Your notes only cover cases where they have been put under oath?

A. Yes sir.

Q. And were examined under oath by a member of the State board.

A. Yes sir.

Q. But as to unsworn conversations or admissions you are not competent to testify.

A. No sir.

714 "Mr. WYKES: I desire to read two letters into the record, with the understanding with counsel for complainants, that the writers of those letters in one instance the attorney general of the State of California, and in the other a member of the State board of equalization of the State of California, would have testified to the facts therein set forth, had they been put on the witness stand, and that they stand the same as though they had so testified, subject to legal objections.

Mr. BUTTERFIELD: The testimony is objected to as incompetent and irrelevant."

715 (3.)

March 24, 1904.

STATE OF CALIFORNIA:

Office of the Attorney General—U. S. Webb, Attorney General.

SAN FRANCISCO, CAL., February 3, 1904.

Mr. Chas. A. Blair, attorney general, Lansing, Michigan.

DEAR SIR: Your favor of January 8th is before me. You ask for information "as to whether the State board of equalization of

California, in assessing the railroad property of your State to the railway companies, deducts the mortgage, or bond, or other indebtedness, and makes a — assessment of the items to the holders, in accordance with the decisions of Mr. Justice Fields in the case of *County of San Mateo v. D. P. R. Co.*, 13 Fed. Rep. 722, and *County of Santa Clara vs. S. P. R. Co.*, 18 Fed. 385."

In reply, will say that at the time I received your letter I was not fully advised as to the views entertained by the State board of equalization on the subject mentioned by you, and I have taken occasion to refer your letter to that board for information. I learned from that board that railway companies have been assessed in the State of California according to the letter of section 4, article XIII of the constitution of 1879; that such assessments have at all times been accepted and no objection has been made either to the board or otherwise, concerning such assessments.

In the case of *People vs. C. P. R. R. Co.*, 105 Cal. 576, which was appealed to the United States Supreme Court and is reported in vol. 162, U. S. 91 the rule seems to be stated by the courts that railway companies which submit to the jurisdiction of the  
716 State board of equalization and make no objection to that board concerning their assessments, may not subsequently be heard to complain. However whatever may be views entertained by either the railway companies and their counsel, I may say, the practice has been as stated above.

You further ask for the names and address of the attorneys who represented the parties to the cases referred to by you. In the case first cited by you, you will find the names of the attorneys on page 727 of the 13th Fed. Rep. Of the names there given, will say that A. L. Rhodes is at the present time superior judge of Santa Clara county; A. L. Hart, then attorney general, Creed Haymond, and J. Norton Pomeroy are deceased; Y. I. Bergin has his offices at #30 Nevada block, San Francisco; T. B. Bishop has his office in the Hobart building, San Francisco.

In the case reported in 18 Fed. 385, you will find the names of the attorneys printed on page 387. E. C. Marshall, the then attorney general, is deceased; D. M. Delmas has his office in this building; W. T. Baggett has his office in the Hearst building, San Francisco; J. H. Campbell is at present district attorney, San Jose, Santa Clara Co., California; S. W. Sanderson, J. N. Pomeroy, H. S. Brown and P. D. Wiggington are all deceased; S. C. Denson is also deceased; T. I. Bergin is the same person mentioned above. I think you will find that A. L. Rhodes, T. I. Bergin, W. T. Baggett and D. M. Delmas were the leading attorneys in the litigation.

Any further information I can give you will be given with pleasure.

Yours very truly,

U. S. WEBB,  
Attorney General.

717

(2.)

March 24, 1904.

LAW Offices of William H. Alford, Mutual Savings Bank Building,  
708 Market Street, San Francisco, Cal.

SAN FRANCISCO, February 4, 1904.

Hon. Roger Irving Wykes, ass't attorney general, attorney general's  
office, Lansing, Michigan.

MY DEAR SIR: Upon my return to San Francisco, a short time ago,  
your favor of January 8th, was handed to me. I am sorry to have  
missed you when you called at my office.

Referring to the question which you asked as to what has been  
the course of the State board of equalization in assessing railroad  
properties, I will say that I have been on the board only one year,  
but from the best of information, the board has followed the cases  
cited in your letter.

(County of San Mateo *vs.* Southern Pac. R. Co., 15 Fed. Rep.  
722, and County of Santa Clara *vs.* Southern Pac. R. R. Co.,  
18 Fed. Rep. 385.)

The board of equalization of this State has been following the de-  
cisions in

People *vs.* Central Pacific Railroad Co., 105 Cal., 576, also  
162 U. S. Rep. 81; also 18 Wall 5.

These cases hold, as you will see, that a State has the power to levy  
taxes upon a franchise granted by the State and that a State fran-  
chise for a railroad is an entirely different thing from a Federal  
franchise for the same road.

They hold also that individuals (including corporations) may be  
classified for the purpose of taxation, if they constitute classes requir-  
ing legislation peculiar to themselves, etc.

718 #2. R / I. W.

For the same reasons, in assessing railroad properties we fol-  
low our constitution and do not deduct any mortgage or bonded  
or other indebtedness in making assessment. Our board makes no  
separate assessment on these securities to the holders for the reason  
that we have no power to assess bonds or mortgages. Our power as  
assessor is limited exclusively to railroad properties.

Trusting this furnishes you with the information desired, I re-  
main

Yours respectfully,

WM. H. ALFORD.

719 FRANK W. BLAIR, for defendant.

## Direct examination—Mr. BLAIR:

Clerk in the office of auditor general; computed from records in that office the tax rate paid by property generally in the several counties through which the several complainant railroad companies' railroads run, taking the total tax given by the returns of assessing officers and dividing by total valuation fixed by boards of review.

These percentages are:

Railroad.	Counties in which land owned.	Average rate.
Munising Ry. ....	Alger, Marquette. ....	.02167+
Duluth, S. S. & Atl. ....	Alger, Baraga, Chippewa, Gogebic, Houghton, Luce, Mackinac, Marquette, Ontonagon, Schoolcraft. ....	.01479+
Chi. & N. W. ....	Alger, Delta, Dickinson, Gogebic, Iron, Marquette, Menominee, Ontonagon. ....	.02526+
M., St. P. & Ste. M. ....	Alger, Chippewa, Delta, Mackinac, Menominee, Schoolcraft. ....	.02855+
Chi., Mil. & St. P. ....	Baraga, Dickinson, Houghton, Iron, Marquette, Ontonagon, Delta, Menominee. ....	.01395+
G. R. & I. ....	Allegan, Charlevoix, Emmet, Grand Traverse, Kalamazoo, Kalkaska, Kent, Mecosta, Montcalm, Osceola, Otsego, St. Joseph, Wexford, Missaukee, Cheboygan. ....	.01558+
I. S. & M. S. ....	Allegan, Branch, Calhoun, Eaton, Hillsdale, Ingham, Jackson, Kalamazoo, Kent, Lenawee, Monroe, St. Joseph, Washtenaw, Wayne, Barry. ....	.01629+
Pontiac, Ox. & No. ....	Huron, Lapeer, Oakland, Tuscola. ....	.01377+
Ann Arbor. ....	Benzie, Clare, Clinton, Gratiot, Isabella, Livingston, Manistee, Missaukee, Monroe, Osceola, Shiawassee, Washtenaw, Wexford. ....	.01622+
Gogebic & Mont. River. ....	Gogebic. ....	.02655+
Lake Sup. & Ish. ....	Marquette. ....	.0207 +
Marquette & S. E. ....	Marquette. ....	.0207 +
Copper Range. ....	Houghton, Ontonagon. ....	.00858+
Escanaba & Lake Sup. ....	Delta, Dickinson, Marquette. ....	.01746+
Wis. & Mich. ....	Menominee, Dickinson. ....	.02467+
G. T. & W. ....	Calhoun, Cass, Eaton, Genesee, Ingham, Kalamazoo, Lapeer, Shiawassee, St. Clair, St. Joseph. ....	.01470+
D., G., H. & M. ....	Clinton, Genesee, Ionia, Kent, Oakland, Ottawa, Shiawassee, Wayne. ....	.01732+
Mich. Air Line. ....	Ingham, Jackson, Livingston, McComb, Oakland. ....	.01254+
T., Sag. & Mus. ....	Gratiot, Kent, Montcalm, Muskegon. ....	.0158 +
Cin., Sag. & Mack. ....	Bay, Shiawassee, Saginaw. ....	.01452+
D. & M. ....	Alcona, Alpena, Arenac, Bay, Cheboygan, Iosco, Montmorency, Ogemaw, Otsego, Presque Isle. ....	.02539+
Manistee & N. E. ....	Benzie, Grand Traverse, Leelanau, Manistee. ....	.01887+
Mineral Range. ....	Baraga, Houghton, Keweenaw, Ontonagon. ....	.00905+



Railroad.	Counties in which land owned.	Average rate.
Chi., Det. & Can. G. T. Jct.	St. Clair.....	.01282+
St. Clair Tunnel Co.....	St. Clair .....	.01282+
S. Ste. Marie Bridge Co.....	Chippewa.....	.02589+
Pere Marquette .....	Allegan, Antrim, Bay, Benzie, Berrien, Charlevoix, Clare, Clinton, Eaton, Emmet, Gladwin, Grand Traverse, Gratiot, Huron, Ingham, Ionia, Isabella, Kalamazoo, Kent, Lake, Lapeer, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Osceola, Ottawa, Saginaw, Sanilac, St. Clair, Tuscola, Van Buren, Washtenaw, Wayne .....	.01728+
Michigan Central .....	Barry, Bay, Berrien, Branch, Calhoun, Cass, Cheboygan, Clinton, Crawford, Eaton, Genesee, Gladwin, Ingham, Jackson, Kalamazoo, Kent, Lapeer, Macomb, Monroe, Oakland, Ogemaw, Otsego, Roscommon, Saginaw, Shiawassee, St. Joseph, Tuscola, Van Buren, Washtenaw, Wayne, Arenac.....	.01640+

(1794-99)

720 I think I ought to explain that the bill of complaint does not include Arenac county, the railroad runs directly through Arenac county and I didn't know what to do, so I put it in.

The road is .01640 plus.

Q. Have you here the assessment roll of the State board of assessors for 1902?

A. I have, yes sir.

(Witness presents roll.)

Q. That is the original roll is it?

A. That is the roll made after the supreme court had handed down that decision.

Q. Will you state what corporations are assessed upon that roll?

A. You want only those which are assessed?

Q. Give all of them.

A. There are some names in this roll but there is no tax levied against them; the Alpena, Gaylord & Western Railroad Company, for instance.

Q. I ask you to read those that there has been a tax levied upon.

A. The Ann Arbor Railroad Company.

The Arcadia & Betsy River Railroad Company.

The Ausable & Western Railroad Company.

The Bear Lake and Eastern Railroad Company.

The Boyne City & Southeastern Railroad Company.

The Chicago, Kalamazoo & Saginaw Railroad Company.

- The Chicago, Milwaukee & St. Paul Railway Company.  
 721 The Chicago & Northwestern Railway Company.  
 The Cincinnati, Northern Railroad Company.  
 The Cleveland, Cincinnati, Chicago & St. Louis Railway Company.  
 The Crawford & Manistee River Railway Company.  
 The Copper Range Railroad Company.  
 The Detroit & Charlevoix Railroad Company.  
 The Detroit & Mackinaw Railway Company.  
 The Detroit Southern Railroad Company.  
 The Detroit & Toledo Shore Line Railroad Company.  
 The Detroit Union Railroad Depot & Station Company.  
 The Duluth South Shore & Atlantic Railway Company.  
 Q. Do you know anything about that Detroit & Toledo Shore Line Company, do you know anything about it other than the fact that it appears on the roll?  
 A. No sir, I don't.  
 Detroit, Toledo & Milwaukee Railroad Company.  
 East Jordan & Southern Railroad Company.  
 Escanaba & Lake Superior Railroad Company.  
 Fort Street Union Depot Company.  
 Grand Rapids & Indiana Railway Company.  
 Muskegon, Grand Rapids & Indiana Railway Company.  
 Traverse City Railroad Company.  
 Grand Trunk Western Railroad Company.  
 Chicago, Detroit & Canada Grand Trunk Junction Railway Company.  
 Cincinnati, Saginaw & Mackinaw Railroad Company leased to the Grand Trunk Railway Company of Canada.  
 722 Michigan Air Line Railway leased to the Grand Trunk Railway Company of Canada.  
 Detroit, Grand Haven & Milwaukee Railroad Company.  
 St. Clair Tunnel Company.  
 Toledo, Saginaw & Muskegon Railway Company.  
 Hecla & Torch Lake Railroad Company.  
 St. Joseph, South Bend & Southern Railroad leased to the Indiana, Illinois & Iowa Railroad Company.  
 Lake Superior & Ishpeming Railroad Company.  
 Lewiston & Southern Railroad Company.  
 Lake Shore & Michigan Southern Railway Company.  
 Detroit & Chicago Railroad Company.  
 Detroit, Hillsdale & Southwestern Railway Company.  
 Detroit, Monroe & Toledo Railroad Company.  
 Fort Wayne & Jackson Railroad Company.  
 Kalamazoo, Allegan & Grand Rapids, Railroad Company  
 Kalamazoo & White Pigeon Railroad Company.  
 The Northern Central Michigan Railroad Company.  
 The Sturgis, Coshen & St. Louis Railroad Company.  
 The Manistee & Grand Rapids Railroad Company.

- The Manistee & Luther Railroad Company.  
 The Manistee & Northeastern Railroad Company.  
 The Manistique Railroad Company.  
 Manistique, Marquette & Northern Railroad Company.  
 The Marquette & Southeastern Railroad Company.  
 Mason & Oceana Railroad Company.  
 Michigan Suburban Railroad Company.  
 Michigan Central Railroad Company.  
 723 Battle Creek & Sturgis Railway Company.  
 Bay City & Battle Creek Railway Company.  
 Buchanan & St. Joseph River Railroad Company.  
 Canada Southern Bridge Company.  
 The Detroit & Bay City Railroad Company.  
 The Detroit, Delrey & Dearborn Railroad Company.  
 The Grand River Valley Railroad Company.  
 The Jackson, Lansing & Saginaw Railroad Company.  
 The Kalamazoo & South Haven Railroad Company.  
 The Michigan Air Line Railroad Company.  
 The Michigan, Midland & Canada Railroad Company.  
 The Toledo, Canada Southern & Detroit Railway Company.  
 Milwaukee, Benton Harbor & Columbus Railway Company.  
 The Mineral Range Railroad Company operating the Mineral  
 Range Railroad Company and the Hancock & Calumet railroad.  
 Minneapolis, St. Paul & Sault Ste Marie, Railroad Company.  
 The Munising Railway Company.  
 Onaway & North Michigan Railway Company.  
 Port Huron & Southern Railway Company.  
 The Pere Marquette, Railroad Company.  
 The Grand Rapids, Belding & Saginaw Railroad Company.  
 The Bay City Belt Line Railroad Company.  
 The Grand Rapids, Kalakaska & Southeastern Railroad Company.  
 The Saginaw, Tuscola & Huron Railroad Company.  
 The Pontiac, Oxford & Northern Railroad Company.  
 724 The Quincy & Torch Lake Railroad Company.  
 The Rapid Railroad Company.  
 Q. Do you know anything about that?  
 A. Well I have an idea it is an electric road, that is all.  
 Q. Is there a tax assessed against that?  
 A. Yes sir.  
 Q. Do you know whether it is the electric road that runs from  
 Detroit to Port Huron?  
 A. I do not.  
 The Sault Ste. Marie Bridge Company.  
 The South Haven & Eastern Railroad Company.  
 The Toledo & Monroe Railway Company.  
 The Wabash Railroad Company.  
 The Wisconsin & Michigan Railway Company.  
 The Wisconsin Central Railway Company operating the Gogebic  
 & Montreal railroad.

Then we have the express companies and freight lines.

Q. I will have you read all that there has been a tax assessed against covered by that assessment roll.

A. —

The Adams Express Company.

The American Express Co.

The Canadian Express Co.

The Pacific Express Co.

The United Express Co.

The Western Express Co.

The Adamson Stock Car Co.

The American Car Co.

725 The American Cereal Co. Dispatch.

The American Cotton Oil Co.

The American Distributing Co.

The American Fast Freight Line.

The American Livestock Transportation Co.

The American Refrigerator Transit Co.

The American Tank Line.

The Anglo-American Refrigerator Car Co.

The Armour Car Lines.

The Arms Palace Horse Car Co.

Black River Transportation Co.

Q. Is there a different heading at the top of those?

A. No sir, there is no different heading, they are put in a separate part of the book but in the recapitulation they are separated.

Booths Coal Storage system.

Buckeye Transportation Co. successors to the Cincinnati Abbator Co.

Burton Stock Car Co.

California Fruit Transportation Co.

California Fruit Express Co.

Canda Cattle Car Co.

Cedar Rapids Refrigerator Express.

Chicago, New York & Boston Refrigerator Co.

Coal Blast Transportation Co.

Commercial Dispatch.

Consolidated Cattle Car Company.

Consolidated Rolling Stock Co.

726 Continental Fruit Express.

Cudahy Milwaukee Refrigerator Line.

Cudahy Stock Express.

Dairy and Dressed Poultry Line.

Dairy Dealers Dispatch.

Dairy Shipper Dispatch.

Diamond Car Line.

The Jacob Dole Packing Company and Refrigerator Car Line.

Express Coal Line.

Express Freight Line.

- German American Refrigerator Line.
- Hackett Refrigerator Car Company.
- Hammond Refrigerator Line.
- Horlick's Food Company Car Line.
- Kansas City Refrigerator Car Company.
- Keystone Livestock Express.
- Kingan Refrigerator Line.
- Lake Carriers Oil Co.
- Libbey McNeil & Libbey Refrigerator Line.
- Lipton Car Lines.
- Live Poultry Transportation Co.
- Mather, Horse & Stock Car Company.
- Merchants Dispatch Transportation Co.
- Midland Linseed Dispatch.
- Missouri Car Storage, & Repair Co.
- Morrell Refrigerator Line.
- National Car Co.
- 726½ National Rolling Stock Co.
- New England Car Co.
- North & South Rolling Stock Co.
- Pabst Refrigerator Line.
- Pacific Stock Express.
- Peerless Transit Line.
- Produce Shippers Dispatch.
- Provision Dealers Dispatch.
- W. P. Rend Transportation Co.
- St. Charles Refrigerator Dispatch.
- St. Louis Car Co.
- St. Louis Dressed Beef & Provision Refrigerator Line.
- St. Louis Refrigerator Car Co.
- Shippers Refrigerator Car Co., Southeastern Line.
- Southern Dispatch Lumber Line.
- Southern Freight Line.
- Southern Iron Car Line.
- Special Freight Dispatch.
- Squires Car Line. (Correct name, Boston Livestock Lines)
- Streets Western Stable Car Line.
- Swift Refrigerator Transportation Co.
- Union Refrigerator Transit Co.
- Union Tank Line Co.
- Venice Transportation Co.
- Western Livestock Express.
- Western Refrigerator Line.
- Western Refrigerator Transit Co.

727 On motion of the board the following named railroad corporations and the properties thereof subject to taxation under act 173, public acts of 1901 having been omitted from such assessment roll were placed thereon in the following form, namely :  
 The Grand Rapids, Belding & Saginaw Railroad Company: De-

scription as follows: Railroad, rolling stock, right-of-way and appurtenances thereto and all other property used in carrying on the corporate business and subject to taxation by the State board of assessors.

The valuation was placed at \$275,000.

The Bay City Belt Line Railroad Company. Same description as above. Valuation \$100,000.

The Grand Rapids, Kalkaska & Southeastern Railroad Company. Same description as above. Valuation \$375,000.

The Saginaw, Tuscola & Huron Railway Co. The same description as above. \$700,000.

The Alpena, Gaylord & Western Railway Co. Same description as above. \$500.

The Alpena & Western Railway Co. Same description as above. \$500.

The Central Michigan Railroad Co. Same description as above. \$1000.

The Grand Rapids, Kalamazoo & South Haven Traction Co. Same description as above. \$1000.

The Sanilac Railroad Company. Same description as above. \$2000.

The Travers City, Leelanau & Manistique Railroad Co.

728

Pages 1808 & 1809 of Record.

729

A. Page 49. "Statement of the method pursued by the State board of assessors in re-ascertaining and re-determining in accordance with the provisions of act 173 of the public acts of 1901, section 11 of article 14 of the constitution and the order of the supreme court of the State of Michigan. The average rate of taxation hereinafter recorded.

The said State board of assessors in accordance with and within the time fixed by said act 173 required and received from the several counties and municipalities throughout the State, the reports and information provided for and required by said act 173 of the public acts of 1901, and after the determination of the said supreme court that the taxes previously levied by it under the provisions of said act were illegal for the reason that such average rate was not ascertained and determined according to law proceeded thereon in accordance with the provisions of said act, constitutional provision and the order of said court to re-ascertain and re-determine the average rate of taxation throughout the State upon property (other than that subject to assessment by the State board of assessors under said act) upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes for the year 1902 as follows:

a. It is ascertained from the said reports and information so received that the aggregate ad valorem taxes levied in the several municipalities of the several counties of the State for

730

State, county, township, school and municipal purposes (not

including taxes levied for any other purpose) for the year 1902 was the sum of twenty-three million four hundred seventy-six thousand, seven hundred thirty-three dollars and fifty-five cents (\$23,476,733.55.)

b. It examined and considered the said reports and information so required and received and from the same ascertained and determined the aggregate assessed valuation of all the property in the State upon which ad valorem taxes were levied for State, county, township, school and municipal purposes for the year 1902 (other than that subject to assessment by the State board of assessors) as assessed by the several assessing officers of the several municipalities of the State to be the sum of one billion, four hundred eighteen million, two hundred fifty-one thousand eight hundred and fifty-eight dollars. (\$1,418,251,858.)

c. The average rate was then determined to be \$16.55329 on each one thousand dollars of assessed valuation by dividing the total tax so levied in the amount so determined by the total assessed valuation of properties subject to ad valorem taxes for State county township, school and municipal purposes found as aforesaid.

Done at the city of Detroit, Michigan, this 9th day of May, 1903.  
William T. Dust, James C. McLaughlin, Amariah F. Freeman,  
members of the State board of assessors.

Mr. BLAIR: That is all.

Mr. BUTTERFIELD: I have no cross examination.

731 F. O. GULLIFER, recalled for complainant.

Direct examination—Mr. BUTTERFIELD:

Witness' attention called to Table No. 10, appearing in Exhibit C. (That table contains all items that went into dividend and divisor in computation of last average rate, and all of items were made use of in dividend and divisor except last percentage column.)

Cross-examination—Mr. TOWNSEND:

Any drain tax spread at large reported to us was included, but no others.

(The certificate of the State board of assessors, setting forth the method of re-ascertaining average rate for 1902, sets forth that the aggregate ad valorem taxes used as a dividend were those "levied in the several municipalities of the several counties of the State, for State, county, township, school, and municipal purposes, (not including taxes levied for any other purpose).")

(See table in report of State Board of Assessors for 1902, Exhibit C, pp. 140 and 141.)

732 Portions of Exhibit "F" attached to the bill of complaint, being the report of the State board of equalization for the year 1901.

Offered by complainant.



LANSING, MICH., Aug. 19, 1901.

In accordance with the provisions of act 106, laws of 1851, (section 136 of the compiled laws,) the State board of equalization of the State of Michigan met in the senate chamber at the capitol in the city of Lansing on Monday, August 19th, 1901, (the third Monday of August,) at two o'clock in the afternoon.

The roll of members was called by Jason E. Hammond, one of the employes in the office of the auditor general, the entire board being present, viz :

Hon. Orrin W. Robinson, lieutenant governor.

Hon. Fred. M. Warner, secretary of state.

Hon. Daniel McCoy, state treasurer.

Hon. Perry F. Powers, auditor general.

Hon. Edwin A. Wildey, commissioner of the State land office.

Page 5, EXHIBIT F.

The CHAIRMAN : " We have met under the State law providing for an equalization of the taxes of the several counties of the State. The law further provides that each county may be heard. There are several gentlemen here, who I presume are present for the purpose of representing the different counties throughout the State. Also we have a new feature in our State equalization in the shape of the tax commission, which is an advisory board to this board, some of the members of which are here.

" It will be the policy of the board of equalization to listen to the statements made by the gentlemen who represent the several counties here, and following the statement of each gentleman if the tax commission desires to cross-examine or ask any questions, they will have an opportunity at that time to do so. So that when this board comes to weigh the evidence they will have before them each county by itself. That is the policy agreed upon by the equalization board.

734 Following the statement of the representative of the county, if the tax commission desires to ask any questions, the proper time to do it will be at that time.

Page 9, EXHIBIT F.

LANSING, MICH., August 20, 1901.

The board met, pursuant to adjournment, at two o'clock in the afternoon, the entire board being present.

The CHAIRMAN : " During the adjournment, the board has had a conference with the tax commission, and they have authorized the chairman to make this statement : That the figures or valuations as

made by the tax commission will in due time be presented to the board of equalization for their consideration; that time will probably be within the next ten days. After the hearing is had from the counties, there will be an adjournment of this board for a few weeks to write up the evidence. In the meantime, the figures of the tax commission will be published in all the papers throughout the State, and at the convenience of this board, notice will be given when it will convene, and a day set for a hearing on the valuations as placed by the tax commission from all such counties as desire to come here and have a hearing on that point. We will continue the hearing as we have been proceeding so far, with the tax commission privileged to ask questions. I understand that within ten or twelve days the figures of the tax commission will be published in all the papers so that all the State will have them and a hearing will be had."

Mr. POWERS: "I would make a motion at this time, that inasmuch as the State tax commission has compiled certain information, which later they are going to place before this board for its information, in the line of its duty, and that as there appears to be a desire on the part of those present to know now what this information is that they are going to give the State board of equalization,

I would move that such information as they have compiled and prepared, be placed at the disposition of the representatives of the counties who are here for the purpose of getting this information.

It should be stated in connection with this that the State board of equalization, of course, has not gone over with the State tax commissioners this information, as to how it was gotten and have not yet placed the value upon it which they may place or the value that may be placed upon it one way or the other after they have received the detailed information, which the State tax commission will give them. But, such as it is, I think no harm can come from it and much good may be served by putting it at the disposal of the persons who are now here representing the several counties of the State.

And I therefore move that this information be placed at the disposal of the representatives of the counties."

Which motion was supported by Mr. Warner and declared carried by the chairman."

#### Page 11, EXHIBIT F.

Mr. McCoy offered the following resolution:

Resolved, That this board adjourn to Monday, the 16th day of September at 2:30 p. m., on which date opportunity will be given all counties who desire to be heard in rebuttal of the figures furnished by the tax commission concerning their respective counties.

736

## Page 11, EXHIBIT F.

LANSING, MICH., Sept. 16, 1901.

The Secretary reported that the correspondence with the Hon. H. M. Oren, attorney general, regarding the powers and duties of the State board of equalization was in his hands. It was agreed that inasmuch as this correspondence had been published in the Detroit newspapers, that the reading of the same at the present time be dispensed with. (This correspondence is printed in full on a later page).

## Page 12, EXHIBIT F.

LANSING, MICH., Sept. 17, 1901.

The board met at 2:30 p. m. in the office of the lieutenant governor and immediately took up the work of equalization, using comparative tables prepared for use.

On motion of Mr. Powers, seconded by Mr. McCoy, the following resolutions were adopted:

Whereas, this board has examined the statements of the assessment for 1901 and of the equalization made by the boards of supervisors of the several counties at the June session of said boards, as certified by the chairman and clerks of said boards and reported to the auditor general, and has also heard the representatives of the several boards of supervisors, and examined the statistics prepared by the State board of tax commissioners which tend to show the character and value of property in the several counties; and,

Whereas, from such examinations and hearings, this board finds that the relative value between the several counties as assessed for the year 1901 and equalized by the boards of supervisors as aforesaid is not equal and uniform according to location, soil, improvements, production and manufactories, but that such assessment and valuation are relatively unequal as between the several counties; and,

Whereas, the board finds further from its examination of  
737 said reports and statistics that the personal estate of the several counties has not been uniformly estimated; therefore,

Resolved That this board equalize such assessments as provided in section 132 of the compiled laws.

## Page 13, EXHIBIT F.

LANSING, Mich., Sept. 18, 1901.

The board met at 9:30, and the entire day, with the exception of the noon recess, was devoted to a careful review and comparison of the counties.

The following resolution offered by Mr. Wildey and seconded by Mr. McCoy was unanimously adopted.

Resolved That the assessment of the several counties in the State of Michigan be and it is hereby equalized as follows:

Counties.	Valuation as equalized by boards of supervisors in 1901.	Amount added by State board of equalization in 1901.	Amount deducted by State board of equalization in 1901.	Aggregate of valuation as equalized by State board of equalization in 1901.
Alcona .....	\$1,107,512.	\$192,488.	.....	\$1,300,000.
Alger .....	2,547,402.	557,598.	.....	3,100,000.
Allegan .....	18,000,000.	3,000,000.	.....	21,000,000.
Alpena .....	4,500,000.	500,000.	.....	5,000,000.
Antrim .....	4,325,833.	1,174,167.	.....	5,500,000.
Arenac .....	1,800,000.	294,000.	.....	2,100,000.
Barnes .....	1,793,838.	906,162.	.....	2,700,000.
Barry .....	10,918,477.	4,081,523.	.....	15,000,000.
Bay .....	23,571,508.	8,428,492.	.....	32,000,000.
Benzie .....	2,776,239.	423,761.	.....	3,200,000.
Berrien .....	25,224,823.	4,775,177.	.....	30,000,000.
Branch .....	16,261,730.	3,238,270.	.....	19,500,000.
Calhoun .....	30,433,668.	6,566,332.	.....	37,000,000.
Cass .....	12,415,000.	3,085,000.	.....	15,500,000.
Charlevoix .....	3,595,827.	604,173.	.....	4,200,000.
Cheboygan .....	3,400,000.	1,100,000.	.....	4,500,000.
Chippewa .....	10,035,627.	2,464,373.	.....	12,500,000.
Clare .....	1,411,333.	788,667.	.....	2,200,000.
Clinton .....	17,211,805.	2,788,195.	.....	20,000,000.
Crawford .....	974,333.	225,677.	.....	1,200,000.
Delta .....	6,977,088.	2,422,912.	.....	9,400,000.
Dickinson .....	7,000,000.	4,200,000.	.....	11,200,000.
Eaton .....	15,000,000.	6,000,000.	.....	21,000,000.
Emmet .....	5,814,939.	2,185,061.	.....	8,000,000.
Genesee .....	24,543,876.	4,956,124.	.....	29,500,000.
Gladwin .....	1,689,999.	410,001.	.....	2,100,000.
738				
Gogebic .....	8,956,200.	5,043,800.	.....	14,000,000.
Gd. Traverse .....	7,900,000.	1,600,000.	.....	9,500,000.
Gratiot .....	10,987,700.	4,512,300.	.....	15,500,000.
Hillsdale .....	16,828,400.	4,171,600.	.....	21,000,000.
Houghton .....	98,425,000.	41,575,000.	.....	140,000,000.
Huron .....	11,004,396.	2,395,604.	.....	13,400,000.
Ingham .....	18,000,000.	9,500,000.	.....	27,500,000.
Ionia .....	17,306,539.	4,193,461.	.....	21,500,000.
Iosco .....	1,800,000.	100,000.	.....	1,900,000.
Iron .....	4,508,000.	1,402,000.	.....	6,000,000.
Isabella .....	5,000,000.	2,500,000.	.....	7,500,000.
Jackson .....	30,000,000.	6,000,000.	.....	36,000,000.
Kalamazoo .....	24,302,267.	5,697,733.	.....	30,000,000.
Kalkaska .....	2,852,091.	647,909.	.....	3,500,000.
Kent .....	50,000,000.	40,000,000.	.....	90,000,000.
Keweenaw .....	3,062,394.	937,606.	.....	4,000,000.
Lake .....	1,177,287.	222,713.	.....	1,400,000.
Lapeer .....	13,734,000.	766,000.	.....	14,500,000.
Leelanau .....	2,170,030.	529,970.	.....	2,700,000.
Lenawee .....	27,632,240.	6,367,760.	.....	34,000,000.
Livingston .....	12,500,000.	3,500,000.	.....	16,000,000.
Luce .....	1,559,000.	441,000.	.....	2,000,000.
Mackinac .....	2,077,553.	422,447.	.....	2,500,000.
Macomb .....	20,036,000.	4,964,000.	.....	25,000,000.
Manistee .....	11,198,810.	2,301,190.	.....	13,500,000.
Marquette .....	18,718,000.	11,282,000.	.....	30,000,000.
Mason .....	6,464,769.	1,035,231.	.....	7,500,000.

Counties.	Valuation as equalized by boards of supervisors in 1901.	Amount added by State board of equalization in 1901.	Amount deducted by State board of equalization in 1901.	Aggregate of valuation as equalized by State board of equalization in 1901.
Mecosta .....	\$3,794,150.	\$1,205,850.		\$5,000,000.
Menominee .....	10,112,386.	3,387,614.		13,500,000.
Midland .....	3,100,000.	1,400,000.		4,500,000.
Missaukee .....	2,147,298.	852,702.		3,000,000.
Monroe .....	16,948,900.	3,551,100.		29,500,000.
Montcalm .....	7,000,000.	6,000,000.		13,000,000.
Montmorency .....	964,800.	535,200.		1,500,000.
Muskegon .....	12,158,646.	2,341,354.		14,500,000.
Newaygo .....	4,772,985.	1,227,005.		6,000,000.
Oakland .....	29,505,275.	4,494,725.		34,000,000.
Oceana .....	5,081,968.	918,032.		6,000,000.
Ogemaw .....	1,962,000.	338,000.		2,300,000.
Ontonagon .....	3,704,619.	4,295,381.		8,000,000.
Osceola .....	3,452,630.	2,047,370.		5,500,000.
Oscoda .....	533,280.	166,720.		700,000.
Otsego .....	2,406,410.	593,590.		3,000,000.
Ottawa .....	16,700,000.	4,800,000.		21,500,000.
Presque Isle .....	2,708,553.	291,447.		3,000,000.
Roscommon .....	393,424.	106,576.		500,000.
Saginaw .....	35,163,656.	6,836,344.		42,000,000.
St. Clair .....	23,563,000.	6,437,000.		30,000,000.
St. Joseph .....	15,002,018.	2,997,982.		18,000,000.
Sanilac .....	10,981,022.	3,018,978.		14,000,000.
Schoolcraft .....	2,800,055.	1,199,945.		4,000,000.
Shiawassee .....	13,797,750.	7,702,250.		21,500,000.
Tuscola .....	14,351,897.	3,148,103.		17,500,000.
Van Buren .....	13,085,000.	2,915,000.		16,000,000.
Washtenaw .....	33,939,760.	3,060,240.		37,000,000.
Wayne .....	258,740,500.	38,259,500.		297,000,000.
Wexford .....	5,401,500.	598,500.		6,000,000.
Totals..	\$1,235,807,025.	\$342,292,975.		\$1,578,100,000.

On motion of Mr. Powers, the board of State auditors were authorized to examine the bills of stenographer, secretary and the members of the board, and all bills for printing, telegrams, etc., and audit the same.

On motion of Mr. McCoy, the secretary was instructed to prepare a table, showing by counties the valuation, according to the estimates of the tax commission, the assessed valuation by county boards of supervisors, the equalization by the State board of equalization in 1901, the equalization by the State board of equalization in 1896, and the percentage of the entire valuation borne by each county according to the last two equalizations.

On motion of Mr. Warner, the secretary was directed to send copies of the printed record of proceedings to all assessing offi-

cers, to representatives of counties who appeared before the board, to county clerks and county treasurers, and to deposit the remaining copies in the auditor general's department for the supplying of future demands therefor.

On motion of Mr. Wildey, the secretary was authorized to return original records and valuable maps, or similar exhibits, to the parties by whom they were filed.

The minutes of the several sessions of the board, August 19-23 and September 16-18, inclusive, were read and approved.

On motion of Mr. McCoy, seconded by Mr. Powers, the board adjourned *sine die* at 6:00 p. m.

# Office of State Board of Equalization,

LANSING, MICH., Sept. 18, 1901.

We hereby certify that the foregoing is a full and correct report of the proceedings of the State board of equalization at its session in 1901.

ORRIN W. ROBINSON, Chairman.  
JASON E. HAMMOND, Secretary.

740 Mr. WYKES: We move to strike from the record Exhibit F of the bill of complaint so far as it has been introduced in evidence, and particularly to the table attached thereto, showing valuations and percentages in the several townships on the ground that such table is not a table required to be prepared by the resolution of the State board of equalization, and that no authority of law existed for its preparation or inclusion in the report of the State board of equalization.

## 741 Physical Appraisal of Railroad Properties.

The defendant introduced the testimony of Prof. Mortimer E. Cooley, dean of the department of engineering of the University of Michigan, and of a large number of civil and mechanical engineers, (all of which was uncontradicted), that they had together, under the direction and supervision of said Cooley, made an appraisal of the physical properties of the various railroads concerned in the litigation herein for the year 1900 as of November of that year, and that in the year 1903, after this suit was begun, they made another appraisal of said physical properties as of April 15, 1902, and that the cost of re-producing such physical properties at said respective dates, after making proper deductions therefrom on account of depreciation from use and wear, is as shown by the following table,—no cash, accounts, materials or supplies being included in the 1900 appraisal:

Name of road.	1900. Physical.	1902. Physical.	1902. Cash, accounts, records, ma- terials, & sup- plies.	1902. Total physical, cash, supplies, etc.
Ann Arbor.....	\$6,023,762			
Menominee & St. Paul.....	36,183			
Ann Arbor system.....	6,009,945	6,978,346	569,960	7,548,315
Chi. Mil. & St. Paul.....	2,651,153	3,687,816		
Chicago & Northwestern.....	13,106,148	14,825,191		
Copper Range.....	1,151,701	2,713,943	68,784	2,782,727
Detroit & Mackinac.....	3,455,914	3,976,427	136,920	4,113,347
Duluth, S. S. & Atl.....	8,770,724	9,087,095	466,593	9,553,688
Escanaba & L. Superior.....	664,159	809,818		
Gogebic & Montreal R.....	378,732	394,650		384,650
G. R. & Ind.....	8,762,150		927,738	
Mus., G. R. & Ind.....	534,261		33,128	
Traverse City.....	307,026		4,559	
G. R. & I. system.....	9,603,447	10,833,307	965,425	11,798,732
Grand Trunk Western.....	5,555,887	6,864,084	646,604	7,510,688
Chi. Det. & C. G. T. Junc.....	2,579,836	2,850,556	11,935	2,862,491
Cin. Sag. & Mackinaw.....	1,089,748	1,182,227	9,619	1,191,846
742 D., G. H. & M.....	6,195,171	7,038,425	53,343	7,111,768
Mich. Air Line Ry.....	1,188,089	1,730,829	7,684	1,738,513
St. Clair tunnel.....	1,574,625	1,630,340	1,888	1,622,228
Toledo, Sag. & Muskegon.....	1,083,104	1,312,959	5,850	1,318,809
Grand Trunk group.....	19,306,460	22,619,420	736,923	23,356,343
L. Sup. & Ishpeming.....	1,864,940	1,962,101	35,465	1,997,566
L. S. & M. S.....	3,603,922			
Detroit & Chicago.....	233,421			
Det. Hillsdale & S. W.....	719,567			
Det. Monroe & Toledo.....	2,245,928			
Ft. Wayne & Jackson.....	602,000			
Kal. & White Pigeon.....	1,519,881			
Nor. Cent. Michigan.....	837,089			
Sturgis, Goshen & St. Louis..	111,517			
Lake Shore system.....	9,876,234	{ 18,803,011 12,339,385	} Note 1 49,218 113,942	1,433,125 547,319
Manistee & Northeastern.....	1,183,623	1,383,907		
Marquette & Southeastern.....		433,377		
Michigan Central.....	17,623,749	19,776,748		
Battle Cr. & Sturgis.....	355,806	634,400		
Bay City & Battle Cr.....	246,468	303,364		
Buchanan & St. Jos. River.....	20,971	20,477		
Canada Southern Bridge.....	221,670	262,188		
Det. & Bay City.....	4,165,677	5,371,034		
Det. Delray & Dearborn.....	66,262	81,832		
Grand River Valley.....	1,509,154	2,200,401		
Jackson, Lansing & Saginaw..	6,034,496	8,041,680		
Saginaw Bay & N. W.....	402,388	400,138		
Kalamazoo & So. Haven.....	444,913	758,508		



Name of road.	1900. Physical.	1902. Physical.	1902. Cash, accounts, records, ma- terials, & sup- plies.	1902. Total physical, cash, supplies, etc.
Mich. Air Line R. R. ....	2,147,125	2,659,938		
Mich. Midland & Canada. ....	123,774	250,492		
Toledo, Can. So. & Det. ....	2,021,064	2,280,517		
Michigan Cent. system .....	33,463,517	43,151,815	2,959,196	46,111,011
Mineral range. ....	1,303,041			
Hancock & Calumet. ....	591,723			
Mineral Range system. ....	1,933,764	2,880,263	167,214	3,047,467
Minneapolis, St. Paul & Sault Ste. Marie. ....	4,016,306	4,537,362	459,901	5,017,353
Munising. ....	732,566	642,246	30,816	673,002
Flint & Pere Marquette. ....	11,009,129			
Det., G. R. & Western. ....	6,468,854			
Chicago & W. Michigan. ....	7,456,714			
Chicago & N. Michigan. ....	1,405,194			
G. R. Kalkaska & S. E. ....	381,107			
(Sub. total for comparison) ...	27,411,088			
Bay City Belt Line. ....	110,920			
Sag. Tuscola & Huron. ....	778,076			
(Sub. total for comparison) ...	28,300,064			
Pere Marquette system .....		34,798,973	2,331,403	37,130,376
Pontiac, Oxford & Nor. ....	929,320	1,064,836	61,253	1,126,089
Sault Ste. M. Bridge Co. ....	263,060	313,908	15,275	329,178
Wisconsin & Michigan. ....	358,244	302,975	132,382	435,357

NOTE 1.—No apportionment attempted.

743 This testimony was objected to as immaterial and irrelevant.

744 A. B. BURT, sworn on behalf of defendant.

Direct examination by Mr. WYKES:

I am auditor of the Michigan Central Railroad Co. and am conversant with its accounting affairs.

Small improvements, new track and things of that character go to operating expenses. Regardless of whether improvement costs more than old structure, it would be charged to repairs. Operating expenses contain repairs; we carry that to the case of a new bridge replacing an old one; would be unable to determine but that price for material and labor might be higher.

We carry that system through our accounts. From accountant's standpoint, the Canada southern system, so called, and the Michigan central, so called, have been kept separate. The T. C. S. & D. is part of the Canada Southern system.

To determine the operating expenses of the T. C. S. & D. a percentage for a period of ten years, when accounts were kept separate, is used.

We do not attempt to make a division of actual expenses of lines other than the main line. In report to commissioner of railroads we made a division of expenses by divisions to comply with the blank. This was upon a ten year basis. The period would in all probability be ten years prior to 1893.

This percentage was taken upon the entire system, and was arrived at by taking expenses for each branch, arriving at a total, and the ratio which each branch bore to the whole, fixed the percentage.

In 1901, \$210,000 was taken out of net surplus for the year's operation to pay for certain expenditures. This was an exception to our rule of charging every expense on account of maintenance of way, equipment and construction to operating expenses, except where paid for by bond issue.

745 In classification of operating expenses we are governed by the classification of the interstate commerce commission, which had been adopted by us in a general way, before the interstate commerce commission issued classification, and has since been in force. We have printed classification showing wherein we have varied from interstate commerce classification.

(Mr. Butterfield moves to strike out all testimony relative to distribution of accounts as immaterial under allegations of bill, and further testimony of that character objected to.)

In our accounts the Michigan Central system includes all lines this side of the Detroit river, except Michigan Midland & Canada and T. C. S. & D. The Canada Southern includes lines in Canada, the Michigan Midland & Canada, T. C. S. & D. and Canada Southern Bridge Company.

In a general way the assignment of earnings to branch lines would be by freight; if shipment made from Mackinaw City to Kalamazoo, the Jackson, Lansing & Saginaw would receive mileage proportion from Mackinaw City to Jackson, and the balance would be placed to credit of the main line. The rate on carload freight is divided absolutely upon car mileage basis.

I think in case of interstate branch, earnings are divided between the portions within and without the State upon a track mileage basis.

(Classification of operating expenses used by company produced, marked Exhibit No. 3. This classification varies but slightly from interstate commerce commission's classification.)

This classification in force since January 1, 1893, and we have used it without any deviation, at least my instruction is it should be so used.

I have made examination to acquire information in regard to division of earnings among the several lines. In freight  
746 business, branch lines allowed their mileage proportion of through rate, and main line allowed its mileage proportion.

On shipment from Mackinaw City to Chicago, the Jackson, Lansing and Saginaw branch would get mileage proportion, and balance would be apportioned to main line. This rule is uniform all over the system upon freight business except that through business between Canada Southern system and Michigan Central is arbitrarily divided upon constructive mileage.

In passenger business, earnings from a passenger ticket between Mackinaw City and Chicago are divided on a mileage basis, allowing the main line its mileage proportion, providing that it would not exceed its legal proportion. If the main line's proportion would exceed two cents per mile, excess goes into division over which the business passed. On branch lines, the apportionment between a part within and part without the State, both in passenger and freight departments, is made on mileage basis.

Under contract with American Express Company we receive virtually a lump sum. This is divided among divisions by a percentage of earnings based upon experience of ten years. This revenue is divided between portions of the division within and without the State on a mileage basis. We endeavor to assign earnings from rentals to the division where rentals received. We have no rebates, but did have prior to 1900. They continued for some period before that time.

Our trains run from Kensington to Chicago over Illinois Central tracks where we have track rights. The Illinois Central is allowed half the rate per passenger. I think half of fifteen cents on business of Michigan Central, and half of nine cents per passenger from all passenger business from other companies over our tracks. This is charged to track rentals and terminals in operating expenses, and this is true of all payments of the same character. The  
747 operating expenses of boats crossing Detroit river are paid from the general revenue of the company, and expenses go as a part of operating expenses of the company.

I agree to prepare and furnish a statement of taxes paid by the various subsidiary companies of the Michigan Central for five years ending with 1902, each year separately, giving taxes in Michigan, outside of Michigan, and also operating expenses for that time, first for entire line of each subsidiary company, and then for portion in Michigan. These figures reported include the figures for taxes for other than railroad purposes.

In case of a freight shipment from Mackinaw City to Chicago, the Jackson, Lansing & Saginaw would get its mileage proportion, the balance would be the main lines proportion of the amount apportioned from Jackson to Saginaw.

(No cross-examination.)

748 JAMES E. HOWARD, sworn as a witness for defendant.

Direct examination by Mr. WYKES :

Am the auditor of the Pere Marquette Railroad Co.

The earnings of the Pere Marquette are apportioned between the part within and without the State on a track mileage basis. During the period in question, between 1900 and 1902, the boats had pro rata for portion of earnings fixed by traffic department.

"Mr. STEVENS : I must object to the request of the State's attorney for the witness to spend time in the way of looking up information under the circumstances. The State's accountants are at liberty to examine the books, and to obtain this information for themselves, and it seems to me it is not fair to ask the witness nor any employees of this company that they do this work for the State. We would be glad to furnish them with the books from which the information may be obtained, and it seems to me that is all that ought to be expected. The work of the accounting department has enough in itself to keep all the employees busy doing their regular duties, and viewing the testimony as I do as absolutely immaterial and incompetent, I wish to record an objection to the making of such requests. If it were only a request for one or two particular things, it would be different, but it involves making up a set of figures on all the subjects that are thought to be material by the State's attorney and I submit it should be done by the State's accountants.

Mr. BLAIR : That will be satisfactory. I take it for granted the accountant will be treated with courtesy and be allowed to make his investigation.

Mr. WYKES : There is further information we wanted about your books : the operating expenses and a division of them in the State and out of the State, and a division of those for railroad purposes, and the property which you used for other purposes ; we understand you will permit the books to be examined, which will indicate that?

Mr. STEVENS : We will give you any facilities we have got."

The WITNESS : No system of rebates is in force at present, except construction rebates, meaning where factory is built along the line, it is customary to give half rates on material going into construction.

We use Interstate Commerce Commission's classification.

Rebates paid would be charged against freight earnings, and taken out before gross earnings are declared

750 HENRY C. ADAMS, sworn as a witness for the defendant.

Direct examination by Mr. TOWNSEND :

I live at Ann Arbor, Michigan. I am professor of political economy and finance in the University of Michigan, and have held that position since 1887. From 1880 to 1887 I was professor of

political economy and finance at both Cornell and Michigan universities, and during two years of that time was a lecturer at Johns Hopkins university upon those subjects. I am statistician to the Interstate Commerce Commission and have held that position since the fall of 1887. In the census of 1890 I had charge (under the title of special expert agent) of the entire transportation work of that census, including railroads, street railways, and water transportation exclusive of foreign commerce and express. I was statistician for the postal service commission in 1899, the investigation involving the reports of mail carried from 1870 down to the date of investigation. As statistician of the Interstate Commerce Commission I have been from the organization of the convention of railroad commissioners, the chairman of its standing committee on uniform railway statistics. Through this convention certain of the steps toward uniform methods of accounting in this country have been accomplished. I think I may say that the classification of operating expenses made by these railway accounting officers of that association has been universally adopted.

I am a member and late vice-president of the American Statistical Association; also member and late president of the American Economic Association; member of the International Statistical Association and member of the International Association for Procuring Uniform Legislation.

My writings (excluding pamphlets and articles) on subjects relating to this inquiry, are: A History of Taxation in the United States from 1789 to 1816, which has been translated into German; Public Debts, translated into Japanese; the Science of Finance, also translated into Japanese; Statistical Reports of the Interstate Commerce Commission from 1888 to 1902; a Compendium of the Railways of the United States for 1902 in three parts; two volumes on transportation for the United States in the census report for 1900.

I have given special attention to the subject of the history of the evolution of taxation of railways in the United States.

*Trend of Modern System of Railway Taxation.*—The present system of railway taxation aims to realize ad valorem taxation for railroads. This system finds it necessary to provide special rules and machinery for assessing this class of property. Rhode Island is now the only State which continues the old method of taxing only visible and tangible railway property. In all other States railway properties are under an administration with respect to taxation, separate from the general property tax. The general practice is for the State to assess general railroad property which is not readily localized and for the municipalities to assess the local property. In Michigan, previous to 1901, railways were taxed on the basis of gross earnings, the railways being classified according to the earnings per  
751 mile of line, and a different rate assigned to the different classes. A comparison of the amounts paid by railroads prior to the new law with the amounts paid by other properties showed that the rate of taxation upon other values was very much less than

the rate paid by other properties. There are many reasons in justification of the tendency in the legislation of American States to separate railway from other property for purposes of taxation; the commercial jurisdiction has extended beyond the jurisdiction of the States and it was necessary to modify the rules of taxation so as to conform to the new commercial conditions, otherwise large amounts of property would elude taxation.

Railway corporations have a value in excess of that discovered by the engineers' inventory of the physical property. The securities representing this value are easy of concealment.

*The development of the modern system of taxation involves three steps:*

1st. Taxation of all forms of property instead of mentioning a few specific forms of property. Pennsylvania presents the only exception to this general rule in the way of mentioning certain classes of property and exempting what is left.

2nd. The substitution of the corporation for the individual, in many instances, in matters of taxation. This I believe, is the fact in Michigan, so far as a Michigan corporation is concerned. That is the application of the principle of "taxation at the source."

3rd. Special methods of taxation of property non-local in character resulting from the fact that railroad property is not easily localized, but draws its earnings from large territories. The tax laws have therefore endeavored,—

(a.) Either to expend the proceeds of the tax for general purposes; or

(b.) To assign back the proceeds to the localities.

*Intangible Value of Corporate Property.*—Corporations, especially railroads, have a value in excess of that which the engineer gets by taking an inventory of the physical property, this is indicated by,—

(a.) The sale value of railroad properties which, in the case of a well organized property having a stable and sure income, is greater than the valuation of the physical elements arrived at by an engineer.

(b.) The amount at which the railroad is capitalized.

(c.) The cash value of the stocks and bonds in excess of the value of the physical elements.

(d.) (Under objection of irrelevant.) The fact that receiverships are frequently granted to prevent disintegration of property and the consequent destruction of intangible values.

(e.) A railroad has a value due to established organization and business.

(f.) Many corporations have a permanent income exceeding the amount necessary to pay a fair return on physical valuation.

The term "non-physical value" as applied to corporate value means the value in excess of that found by the engineers' inventory of the property. My use of this word pertains to the situation existing in Michigan, and in such a way that the non-physical value



plus the physical value will equal the aggregate value of the property. The elements entering into this non-physical value are:

752 1. Franchise value—the right to be a corporation where there is a general act of incorporation. This is not exclusive and does not cover a large amount of value. Where a franchise fee is required this kind of franchise value is measured by the cost. It sometimes includes the right to use public property and to employ public authority for corporate ends,—the right of eminent domain. If this is in any sense exclusive and its use advantageous, it becomes an element of value.

2. The right to use public property, which includes possession of traffic not exposed to competition. So far as non-physical value is due to this, it inheres in railroad property and not in other property exposed to the ordinary rules of competition.

3. The possession of traffic held by established connections, through the general traffic taken as a part of a general system, may be exposed to competition. A peculiarity emphasized in the last four or five years is the extent of organization among railroads,—*e. g.* the Michigan Central as a part of the Vanderbilt system, enjoys traffic it otherwise would not have. Railroads work to control competition by extending the ownership of stocks and bonds, by personal ownership, by directors of one corporation holding sufficient stock in another to secure representation on boards of directors of an otherwise competing line. The point is that a railroad which is a portion of such an organization can control in large measure the conditions of transportation and thus earn more money.

4. Economies made possible by increased density of traffic. The fundamental law of transportation, making railroads differ from other classes of business, is that increased density of traffic results in an increased rate of profit.

In Michigan railway traffic has continuously increased enabling railways to perform any unit of service at relatively less cost than otherwise. By density of traffic I mean the aggregate ton,—or passenger mileage,—spread over the particular line in question. One railway with a dense traffic might show a surplus over normal earnings, whereas another, with a less or a different traffic, would not show such surplus.

5. (Growing out of the 4th.) Railways are peculiarly benefitted by the growth of territory. In the absence of commercial or competitive forces, which tend in the great majority of businesses to diffuse the advantage of increase in population or wealth, railways are able to advantage themselves as the direct result of the growth of the community.

Non-physical elements attach to the physical property. We must consider both the physical and the non-physical, to obtain the value of a railway corporation.

(Under objection of irrelevant and incompetent.) There are three methods of valuing railway property:

1. The stock and bond method.



2. Direct capitalization of net income.

3. The inventory method, supplemented by capitalization of final net surplus.

The stock and bond method proceeds on the theory that the corporate property is listed in the balance sheet under the head of assets, which are represented by corporate liabilities. These liabilities are securities and subjects of investment, and the prices paid for them equal the property's aggregate value. The accepted rule is, to take the market value of the stocks and bonds as the measure of the corporate value of the property. Each issue must be taken by itself. The value of the issue is determined by the quotations. The market price varies, but I have been surprised in this investigation to notice the stability of general railway securities. To say we found difficulties in the stock and bond proposition would imply what is not correct.

The following general rules are laid down for the stock and bond plan of valuation :

(a.) On bonds we deduct the accrued interest to the time of purchase.

(b.) Where securities of one corporation are owned by another in the same system in its corporate capacity, we exclude such holding,—the stock of the main company being regarded as representing the securities of the companies held as investments.

(c.) We considered that where the quantity of sales was small and the indebtedness large, the conditions surrounding them might be peculiar and the rate quoted might not represent the judgment of the investor as to the value. We compared the number of securities sold to ascertain if the transactions were sufficient to warrant acceptance of the rate indicated as the legitimate value.

(d.) Where it was impossible to find quotations for a particular class of securities, we have been guided by quotations of securities in all respects similar. Where the sales were meagre we have studied the securities of roads connected with the road in question, *e. g.* finding Canada Southern quotations in larger volume than Michigan Central, we have, to test conclusions, gone into quotations of Canada Southern by studying the contract relations between those roads.

(e.) Where there were no adequate quotations we have availed ourselves of expert evidence on the part of those engaged in dealing in this class of securities. We have also used the Commercial and Financial Chronicle, which is a recognized authority on quotations.

(f.) We have studied quotations from 1890 to the present. From March, 1898, the basis of conclusions is the number of transactions and of bonds sold. The study was extended over so many years in order to eliminate unusual conditions; and where the conditions of the market rendered quotations unreliable, it did not influence our judgment. An illustration of an unusual condition would be a purchase to secure control which would increase prices; or a general desire on the part of the public to deal in those securities.

(g.) We obtained the weighted average so as to give a large sale relatively more influence, in determining the normal price, than a small sale. This weighted average was obtained by multiplying the number of bonds in a particular sale by the price, doing this for every sale of the year, and adding the values thus obtained, and adding up the number of bonds sold, and dividing one by the other. This seemed a more reliable indication of market judgment than a mere stated average.

In the stock and bond plan quotations covering the one year were sufficient if there were no unusual conditions.

*Capitalization of Net Earnings.*—In this plan all net earnings of the road are taken and capitalized at a rate determined. It is necessary to this plan that gross earnings and operating expenses be accurately determined. (Under objection of incompetent and irrelevant) There are reasons why it seems to me improper to place exclusive reliance on the net earnings plan, as,—

(a.) The theory assumes that income is the sole element in the value of the property. Other elements affect its value; at least the saleable value of property does not fluctuate mathematically with the income.

(b.) This means that in buying property of any kind a man considers what the property has done in the past and what it will do in the future, as well as in the year or month when the purchase was made.

(c.) Some Michigan railways fail to conform strictly to the classification of operating expenses and include improvements in operating expenses, which excludes that amount from the basis of capitalization.

The Michigan Central charged improvements to operating expenses as follows: In 1900, \$1,101,271; in 1901, \$1,181,618; in 1902, \$1,383,939. These figures are taken from the opinion of Commissioner Prouty of the Interstate Commerce Commission in an advance rate case, the testimony being such as the Michigan Central submitted in that case. (Objected to as incompetent.)

(d.) A practical difficulty in the "capitalization of net income" is that this plan cannot fix values for property having no net income. I submit a statement of the operating expenses and gross earnings of the Michigan Central system. The statement assumes that 70 % of the gross earnings is a normal operating expense. The percentage for the Michigan Central for the last few years has been much higher. I present also a statement of the net earnings from operation on the Michigan Central system as reported and compared with a curve designating net earnings from operation as they would be if net earnings were 30 % of gross earnings.

(The papers referred to were introduced and marked respectively "Exhibits 1 and 2, February 24, 1904," under objection thereto as immaterial and irrelevant.)

755 The information for making these charts was obtained from the reports to the State railroad commissioner; that to July 30, 1902 was taken from the reports to the Interstate Commerce Commission.

(c.) If different roads make improvements from current earnings in different ratios, the plan of valuing exclusively on net earnings would result in relative inequality. A normal operating expense, if that could be decided upon, would undoubtedly overcome this objection. The income has a decided influence on the valuation of property.

The rule of capitalization of net earnings (under objection as irrelevant) has been applied in some cases *e. g.*, the Union Traction Co. case, or the "Grosscup case" in Chicago. The valuation in that case was of a street railway, which is a different property from a steam railway and is operated under different conditions as to operating expenses. A normal operating expense of railways would be under 70 %,—of street railways 10 % to 14 % less.

The rate in the Grosscup case was high on account of the peculiar conditions in which the property existed, it being finally decided upon from the market, or estimate of business men, as to the value of those and similar securities. I have applied this plan to determine the values of the Pere Marquette and the Michigan Central, but do not attempt to normalize net earnings. To do this would result in an increase in net earnings of the Michigan Central system of 7 % or 8 % gross,—the Pere Marquette operating at about 70 % or 71 % and the Michigan Central at 77 % or 78 %. I think this rule would lead to accurate results if the gross and net earnings were accurately determined and a study of the property showed it absolutely stable and not subject to variation on account of general changes in the market. Where there is a wide variation in gross earnings from year to year, the rule would result in undue fluctuation.

*Inventory Supplemented by Capitalization of Final Net Surplus.*—In 1900 I was called upon by the Michigan State tax commission to determine whether railroads were paying a tax rate on their value equal to the rate on other property. With that problem in view I formulated this inventory plan as follows:

First. I began with the gross earnings from operation; from this I deducted the aggregate operating expenses; to the remainder (termed "income from operation") I added the income of corporate investments, the sum being termed "total income."

Second. I deducted from the total income as an annuity chargeable to capital, a certain per cent. on the appraised value of the physical property. This accepts a certain amount as necessary to support it which is regarded as capital.

Third. From this amount I deducted rents paid for leases of property operated,—if such property is not covered by the physical examination and made the basis of the above annuity. The re-

mainder, if any, represents the surplus, which, capitalized at a certain rate, gives the value of the non-physical property.

This plan provides for a return on the physical properties and for the payment of taxes, and the balance capitalized produces the non-physical value. This non-physical value is explained by the elements above described. The results do not depend on what elements the non-physical property consists of, and my figures will be the same if all those elements except one were eliminated.

756 The determination of the rate for capitalization rests upon the business properties as indicated in the purchase and sale of securities and such other evidences as I am able to get, which indicates the rate of income expected by investors in the class of property under consideration. The result comprehends all elements enumerated and many more. This statement of the manner of arriving at the rate justifies of course the use of different rates for different properties. In applying this rule to the properties of Michigan I have tried to classify them according to condition, connections, character of traffic, and all considerations going to determine the character of the security. I have examined market quotations of securities on the road under examination, and other roads in the same class, and as the result of that study have determined the rate. (Objection to witness giving results of study of other roads) The rate accepted is the net rate to the investor as income.

In the case of bonds it was necessary to determine the length of time they had to run, the interest rate and the market price. This being known, the net return is discovered by ordinary methods. It is the net return to the investor as determined in this way that I have accepted as the basis of capitalization. The rate taken for the Michigan Central for 1902 is  $3\frac{1}{2}\%$  on physical and 5% to determine non-physical valuation.

I have taken the entire system and localized the *Michigan* portion of that value. (Objection of incompetent and irrelevant) The roads which I accepted as similar to the Michigan Central railroad, are the New York Central & Hudson River, the Chicago, Milwaukee & St. Paul, and part of the bonds of the Lake Shore & Michigan Southern, viz: the Detroit, Monroe & Toledo mortgage. Quotations of railways similar to the Michigan Central railroad were taken to find whether there was anything peculiar in the Michigan Central Railroad quotations. I used all the information at my command to determine the fair and reasonable rate in capitalizing. (Objection to testimony as incompetent, it appearing that results are based on examinations of other roads than the Michigan Central) Quotations of other roads were used merely to guide in determining what rate should be adopted for the capitalization of the property. I used everything in my judgment pertinent. I considered the following information:

Name of road.	Description of issue.	Amount of issue.	Amount outstanding.	Return to investor, per cent.				
				1898.	1899.	1900.	1901.	1902.
N. Y. Cent.....	4 3-12 per cent., bond due '97.	\$100,000,000	\$70,000,000	3.28	3.16	3.20	3.21	3.38
C. M. & St. P.....	4 per cent., general mortgage A, due 1899.	150,000,000	24,500,000	3.81	3.59	3.61	3.60	3.32
Lake Shore.....	Gold, 3½ per cent., due '97.	50,000,000	43,844,000	3.33	3.20	3.19	3.22	3.28
Mich. Cent.....	5 per cent. bonds, due 1931, secured on Det. & Bay City.	4,000,000	.....	3.92	3.54	3.60	3.41	3.42

(Mr. Pond moves to strike out the reference to other roads as incompetent.)

The Michigan Central railroad's 7% consols in 1902 were becoming due and reflected the money rather than the security value. I had good quotations for 1898 to 1902 for the Detroit & Bay City 5 %'s of 1931. They netted the investor (an average for five years)

3.58%. Quotations on the Air Line for 1900 and 1902 show 757 a net return of 3.58%. The refunded bonds of the Michigan

Central railroad 1902 (50 years) 3½%, netted the investor 3.32%, and fluctuated about that point and reached below par. Quotations indicate the estimate of the investor in those bonds as a 3.25 or 3.5% investment.

To my best knowledge the quotations used are the prices paid by *bona fide* investors, influenced by no consideration other than investment.

(Tables showing quotations of bonds mentioned were introduced and marked "Exhibits 3, 4, and 5, February 25, 1902," subject to objection by Mr. Pond that the facts disclosed by the tables are not competent evidence in this case.)

The tables are as follows:

758

#### EXHIBIT 3.

New York Central & H. R. R. R. Gold 3½ % Bonds, Due 1997 (Coupon).

Issue.....	100,000,000
Outstanding.....	70,857,000
	1898. 1899. 1900. 1901. 1902.
Jan'y .... { Low.. .. 110½	109
{ High. .... 112½	109½
Feb'y .... { Low.. .. 111½	108
{ High. .... 111½	109
March ... { Low.. .. 111½	109
{ High. .... 112½	110½
April.... { Low.. .. 112	110½
{ High. .... 112½	110½
May ..... { Low.. .. 111½	110
{ High. .... 112½	111
June..... { Low.. 107	110½
{ High. 107	111
July ..... { Low.. 105½	108½
{ High. 105½	109½
	108 109 108½ 107

Aug.....	{ Low.. 106½	110½	109½	108	
	{ High. 107½	110½	110	108	
Sept.....	{ Low.. 107½	110½	109½	107½	108½
	{ High. 107½	111½	109½	108½	108½
Oct.....	{ Low.. 107½	110½	.....	108½	
	{ High. 107½	110½	.....	109½	106
Nov.....	{ Low.. 108	109½	.....	109½	106
	{ High. 108	109½	.....	109½	104
Dec.....	{ Low.. 109½	109½	110½	110	106½
	{ High. 110	110½	111	110	
Average...	{ Low.. 107 15/56	110 81/96	109.525	109 23/96	107 31/72
	{ High. 107½	111 62/96	110.15	109 63/96	108 5/36
Flat average for year.....	107 43/112	111 47/192	109.84	109 43/96	107 113/144
Net average for year.....	106.51	110.38	108.96	108.57	106.92
Interest yielded investor.....	3.28 %	3.16 %	3.20 %	3.21 %	3.26 %

"Flat" includes accrued interest.

"Net" is price after making deduction for accrued interest.

EXHIBIT 4.

759	Chicago, Milwaukee & St. Paul General Mortgage "A" 4 %, Due 1989.	
General mortgage covers.....	\$150,000,000	
Series A issued under same 4 % outstanding.....	24,000,000	
Series B issued under same 3½ % outstanding.....	10,000,000	

	1898.	1899.	1900.	1901.	1902.
Jan'y ....	{ Low.. 104½	108½	109	112½	110½
	{ High. 105½	112½	110½	114½	114½
Feb'y.....	{ Low.. 105½	111	109½	113½	113½
	{ High. 107	112½	111½	114½	114½
March....	{ Low.. 105	111	111½	113½	114½
	{ High. 106	111½	111½	114½	116½
April.....	{ Low.. 103½	111½	112½	113	116½
	{ High. 103½	114½	113	113½	
May.....	{ Low.. 102	113½	112½	112	
	{ High. 104	114½	113	112	
June.....	{ Low.. 104	114	110½	111½	117
	{ High. 106	114½	112½	112½	117
July.....	{ Low.. 104	111½	109½	110	114½
	{ High. 106	112½	111	110½	
Aug.....	{ Low.. 105½	112	110½	110½	
	{ High. 106½	113	110½	110½	
Sept.....	{ Low.. 105	111½	110½	110	113
	{ High. 105½	112	110½	110½	113
Oct.....	{ Low.. 105	111	109½	110½	113½
	{ High. 106½	111½	111	111	113½
Nov.....	{ Low.. 106½	110½	111	111½	113
	{ High. 106½	110½	112½	112	113½
Dec.....	{ Low.. 107½	110	114½	111½	113
	{ High. 109	111½	114½	112	113½
Average...	{ Low.. 104 25/32	111 9/32	110 43/48	111 55/96	113 29/40
	{ High. 106 7/48	112 11/16	111 79/96	112 7/32	114 11/20
Flat average for year.....	105 89/192	111 63/64	111 69/192	111 43/48	114 11/80
Net average for year.....	104.46	110.99	110.36	110.90	113.14
Yield.....	3.81 %	3.59 %	3.61 %	3.60 %	3.52 %

## Lake Shore Gold 3½ % Bonds, 1907.

Issue.....	50,000,000
Outstanding.....	43,844,000 (in 1903).

	1898.	1899.	1900.	1901.	1902.
Jan'y..... { Low..	104½	106	109½	109½	108½
{ High..	106½	107½	110½	109½	108½
Feb'y. .... { Low..	106	107½	110	109½	108
{ High..	106½	108	110½	109½	109½
March .... { Low..	102½	108½	109½	.....	108½
{ High..	105½	110½	110½	.....	108½
April .... { Low..	102	110	110½	110	108½
{ High..	102	111½	111	110	108½
May ..... { Low..	103	111	110	110½	108½
{ High..	105	112½	111½	111½	109½
June. .... { Low..	104	110½	109½	108½	.....
{ High..	104½	111½	109½	108½	.....
July ..... { Low..	104	110	109½	108½	107½
{ High..	104½	110½	109½	108½	107½
Aug. .... { Low..	104	109½	110	109	.....
{ High..	106	110½	110	109	.....
Sept. .... { Low..	105½	109½	109½	109	107½
{ High..	106½	109½	110	110	107½
Oct ..... { Low..	106	108½	109½	108½	105½
{ High..	107½	109½	110½	110½	106½
Nov ..... { Low..	106½	109½	111	.....	104½
{ High..	107½	111	111	.....	106
Dec ..... { Low..	106	109	109	107½	104
{ High..	106½	110½	109½	108½	105½
Average... { Low..	104 29/48	109 17/96	109 79/96	108 79/80	107 1/80
{ High..	105 71/96	110 11/48	110 37/96	109 11/20	107 29/40
Flat average.....	105 11/64	109 45/64	110 5/48	109 43/160	107 59/160
Net average.....	104.30	108.83	109.25	108.39	106.50
Yield.....	3.33 %	3.20 %	3.19 %	3.22 %	3.28 %

761 Michigan Central P. R. 5 % Bonds, Due March 1, 1931, and Secured by Mortgage on Detroit & Bay City Railroad (\$4,000,000 Issue).

Table of Weighted Averages of Prices of Sales on New York Stock Exchange After Deducting Accrued Interest and Showing Net Yield to Investor at Such Prices.

Year.	Average net price.	Yield.
1898.....	119.96	3.92
1899.....	127.82	3.54
1900.....	126.03	3.60
1901.....	129.70	3.41
1902.....	129.04	3.42

Michigan Central 3½ % general (main line) mortgage. Gold bonds due 1952. Issued in 1902; \$10,000,000, issued by Michigan Central at 104½. Yield at 104½, 3.31½; at 105½, 3.27½; at 107, 3.22.



762

(Witness resuming :) I have only taken these quotations as corroborative evidence that the market quotations for the Michigan Central railroad are fair.

For the Pere Marquette I allowed 4½% on physical and 6% on non-physical property, based on quotations of Pere Marquette stock and similar roads.

The average return to the investor in Pere Marquette bonds from 1900 to 1902 are as follows :

Description of bond.	Amount outstanding.	Volume of sales.	Average return to investor, three years, 1900-1902, inc. %.
Flint & Pere Marquette, 5 per cent. bonds due 1939 .....	\$2,850,000 00	\$307,000 00	4.5
Port Huron division, 5 per cent. bonds due 1937 .....	3,500,000 00	750,000 00	4.4
Flint & Pere Marquette, 6 per cent. bonds due 1920 .....	4,000,000 00	130,000 00	4.2

The Ann Arbor is in some respects to be classed with the Pere Marquette. The net return to the investors on its 4% bonds due in 1995, was : in 1900, 4.38% ; in 1901, 4.14% ; in 1902, 4.07%. Other investigations were made to corroborate the proposition that property of the class indicated would net the investor over 4%.

The reason for the difference in the rate applied to the Michigan Central and that applied to the Pere Marquette is in the character of the properties and the results of the operation as indicating their relative value. The two roads keep their accounts in different ways and a capitalization at the same rate would give the Michigan Central a relatively lower value than the Pere Marquette.

This brings out the practice of charging improvements into operating expenses, or paying for current improvements out of current earnings. I do not wish to express any opinion as to the propriety of this practice. What I have to say is confined to the necessity of recognizing it in placing a value upon different companies which shall be relatively fair and equitable. The income account taken from one of the forms provided by the Interstate Commerce Commission for annual reports is the income account used by both the Michigan Central and the Pere Marquette railroads, in making their reports to the Michigan State board of assessors, and is followed by the auditor of the Michigan Central in keeping his accounts. The former auditor of the Michigan Central was a member of the committee which drew up this classification.

(The classification referred to was introduced in evidence (under objection by Mr. Pond) and marked "Defendant's Exhibit 1, February 24, 1904," and is as follows :)

## Income Account.

(For Roads Making Operating Reports.)

Gross earnings from operation—page 35.....

Less operating expenses—page 45 .....

Income from operation.....

Deficit .....

Dividends on stocks owned—page 37.....

Interest on bonds owned—page 39.....

Miscellaneous income—less expenses—page 41 .....

Income from other sources .....

Total income.....

Deficit .....

Deductions from income :

Interest on funded debt accrued—page 23 .....

Interest on interest-bearing current liabilities accrued,  
not otherwise provided for.....

Interest on real estate mortgages.....

Rents paid for lease of road—page 47, A.....

Taxes—page 79, A.....

Permanent improvements—page 29.....

Other deductions .....

Total deductions from income.....

Net income .....

Deficit .....

Dividends, — per cent., common stock—page 17.....

Dividends, — per cent., preferred stock—page 17.....

Other payments from net income .....

Total .....

Surplus from operations of year ending June 30, 1903..

Deficit from operations of year ending June 30, 1903..

Surplus on June 30, 1902, (from "general balance  
sheet," 1902 report) .....Deficit on June 30, 1902, (from "general balance  
sheet," 1902 report) .....

Additions for year.....

Deductions for year.....

Surplus on June 30, 1903, (for entry on "general bal-  
ance sheet," page 51).....Deficit on June 30, 1903, (for entry on "general bal-  
ance sheet," page 49).....

764

This classification was designed to include in operating expenses current repairs and the cost of new property necessary to renew and replace old property. As long as the figures in the balance sheet representing property assets remain unchanged, it is essential that the road be so administered as to maintain the original value. (Under objection of irrelevant) Michigan railroads follow this classification.

Railroads differ in their interpretation of the word "maintenance." Some assume it means keeping the property up to the requirements of technical engineering development. Others that it means simply renewing the property when worn out, which accounts in part for the difference in ratio of operating expenses to gross earnings. In determining whether a road is complying with the classification of operating expenses, reliance must be placed very largely upon the ratio of operating expenses for all roads of the country. (Under objection by Mr. Pond as incompetent and irrelevant.)

I have here a compilation of a number of roads for the years 1890 to 1902 inclusive for the year ending June 30, also for the United States as a whole, also for group 3 and group 6. In the compilation of railway statistics the country is divided into territorial groups. Group 3 includes Ohio, Indiana, the Southern peninsula of Michigan, a small portion of Illinois, and a little cut off on the northeastern portion of Pennsylvania and running up into the territory of New York to Buffalo. This group is among the highest in the country. A corresponding figure for every road in the United States will be found in the annual report. The table referred to is as follows:

Table Showing the Ratio of Operating Expenses to Operating Earnings of Railways in the United States, Compiled from the Reports of the Statistician to the Interstate Commerce Commission, for the Year Ending June 30.

Railways.	1890. %	1891. %	1892. %	1893. %	1894. %	1895. %	1896. %	1897. %	1898. %	1899. %	1900. %	1901. %	1902. %
Entire United States.....	65.80	66.73	66.67	67.82	68.14	67.48	67.20	67.06	65.58	65.24	64.65	64.86	64.66
Group 3, United States.....	68.36	69.33	70.43	71.84	73.04	70.84	71.39	71.29	71.18	70.53	69.22	69.47	69.49
Group 6, United States.....	63.98	64.16	62.84	64.69	63.65	62.78	60.80	62.84	62.17	61.18	61.91	63.00	61.48
Michigan Central.....	70.20	72.40	72.00	74.76	72.36	70.03	72.21	72.26	72.99	72.47	76.12	76.85	76.93
Chicago & West Michigan and Pere Marquette.....	67.86	66.19	70.19	76.69	78.36	78.26	79.22	76.75	76.51	73.82	70.64	.....	.....
Lake Shore & Michigan Southern.....	64.90	65.27	66.17	68.40	67.01	64.18	67.19	63.06	64.23	64.21	61.59	63.77	68.33
Pennsylvania lines.....	64.66	63.43	66.09	68.07	69.99	64.31	62.74	65.49	64.50	65.47	68.63	66.71	67.63
"Big Four" line.....	67.42	70.17	71.41	74.78	74.68	74.23	72.35	72.29	73.79	69.55	67.43	69.09	70.89
Erie lines.....	67.10	68.10	69.37	70.45	77.81	74.21	72.15	72.11	74.89	71.25	74.42	69.40	67.11
Wabash.....	76.80	78.02	79.86	83.14	85.44	82.36	79.72	70.77	72.47	76.42	76.59	76.04	76.14
Ann Arbor.....	60.42	61.12	57.97	77.59	83.97	82.92	93.57	84.36	72.49	77.16	76.95	74.63	72.52
Baltimore & Ohio.....	79.42	82.73	84.15	83.31	77.36	86.24	83.30	88.18	79.64	93.17	70.62	70.25	64.72
Atchinson T. & S. F.....	72.45	79.22	71.16	59.89	67.41	73.65	64.42	64.74	66.18	60.82	54.79	55.17	54.56
Chicago & Alton.....	60.41	59.18	60.71	62.52	55.91	55.48	58.77	59.43	63.04	59.61	71.57	61.94	65.29
Chicago & Northwestern.....	62.16	62.77	61.65	65.08	62.90	61.72	61.57	60.46	63.35	62.37	60.81	60.51	61.95
Chicago, B. & O.....	63.97	61.36	63.23	65.74	58.54	59.22	59.06	57.85	62.10	61.54	61.68	63.05	62.84
Chicago, M. & St. P.....	61.99	63.83	61.75	63.32	60.61	58.63	57.17	37.34	58.94	59.52	64.83	62.86	63.25
Chicago, K. I. & P.....	66.17	62.87	65.53	69.18	67.67	67.50	63.61	63.61	58.83	58.84	60.69	64.32	62.28
Great Northern.....	52.71	48.91	52.94	46.63	46.76	42.66	42.58	53.09	47.89	50.82	53.93	59.55	50.99
Illinois Central.....	59.87	66.33	64.30	61.20	62.03	60.68	60.62	64.90	60.31	61.16	63.88	64.81	63.81

The Pere Marquette and Michigan Central differ in other respects, as shown by the following table of earnings and operating expenses :

Year.	Road.	Gross earnings per mile.	Operating expenses per mile.	Net earnings from operation per mile.
1900.....	Michigan Central.....	\$10,270 00	\$8,089 00	\$2,171 00
1901.....	"      "      ".....	11,196 00	8,895 00	2,301 00
1900.....	Pere Marquette.....	4,289 00	3,271 00	1,018 00
1901.....	"      "      ".....	4,683 00	3,636 00	1,047 00

765 Normally there would be a higher percentage of operating expenses in a road of low gross earnings per mile than in a road with relatively denser traffic.

The Michigan Central has paid dividends regularly for a series of years. In 1883 it paid 5% ; in 1884, 3% ; in 1887 to 1889, 4% ; in 1890, 5% ; in 1891, 5% ; in 1892 to 1894, 5½% ; since 1894, 4%. The amount charged to improvements and included in operating expenses for the last three years at least is considerably in excess of the amount of dividends paid. The Pere Marquette first paid on its preferred stock, February 11, 1901, a dividend of 4% and paid nothing on its common stock until the latter part of 1903. These facts make it proper to use a lower rate of capitalization for the Michigan Central railroad.

(Under objection and motion by Mr. Pond to strike out)

The Michigan Central railroad is among the best railroads in the United States. During the period of depression about 1894, when the dividends of other roads were decreased or deficits resulted from their payment, it maintained its dividends; and assuming 70% is a normal rate of operating expenses, during most of the six years it maintained considerable improvements out of current earnings. The present ability of this road to maintain traffic and prices which enables it to use over a million dollars a year in improvements is a bulwark against depletion of the value of the securities, which does not exist in the case of the Pere Marquette. Considerations of this sort, and market quotations led to the rate adopted by me.

The reason for using one rate on the physical value and another for the excess value is that the latter is exposed to other risks than the former. Assuming that the stock stands for the intangible value, the uncertainties of returns on this, compared with investments representing tangible value, makes a higher rate of interest. If there were no uncertainty in regard to payments on both physical and non-physical value, this consideration might not apply. There is no uncertainty for the past year, but in considering property value it is necessary to forecast the future.

The rule I used contemplates using the average final net surplus for a period of years, as a property's value does not fluctuate mathematically in proportion to earnings. In the case of the Michigan Central railroad computations were used for a period of five years ending December 31, 1902. I came to the conclusion that less than five years was the practice among business men. I used three years in the case of the Pere Marquette because the system had not existed for five years. In the case both of the Michigan Central and the Pere Marquette the surplus for 1902 exceeded the average used. (Under objection by Mr. Butterfield as incompetent and it not appearing that witness knows the value of railroad properties in general) The general trend of values of Michigan railroads, so far as they depend upon gross earnings, has been upwards for five years past.

The figures of gross income of Michigan railroads from 1898 to 1902, are as shown by the following table :

Year.	Entire Michigan income.	Gross income, 10,000 inhabitants.
1898 .....	\$32,122,799 00	\$136,593 00
1899 .....	38,558,895 00	161,597 00
1900 .....	39,644,824 00	161,789 00
1901 .....	42,926,858 00	174,755 00
1902 .....	46,286,596 00	185,718 00

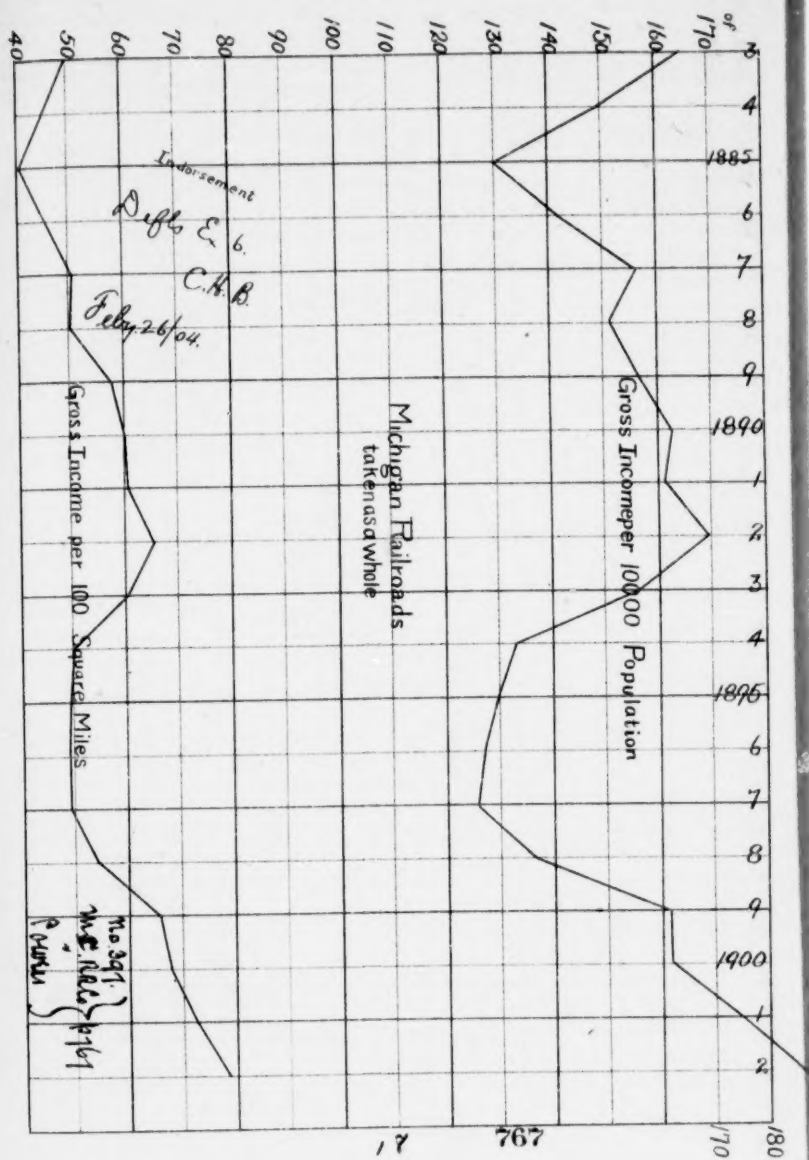
766 During these years there was a slight increase in mileage. The average net earnings for the Michigan Central during that five years was as follows :

	Entire system.	Michigan proportion, track mileage basis.
Average five years, 1898 to 1902 .....	\$3,620,377 00	\$2,503,345 00
1902 .....	3,638,751 00	2,516,050 00

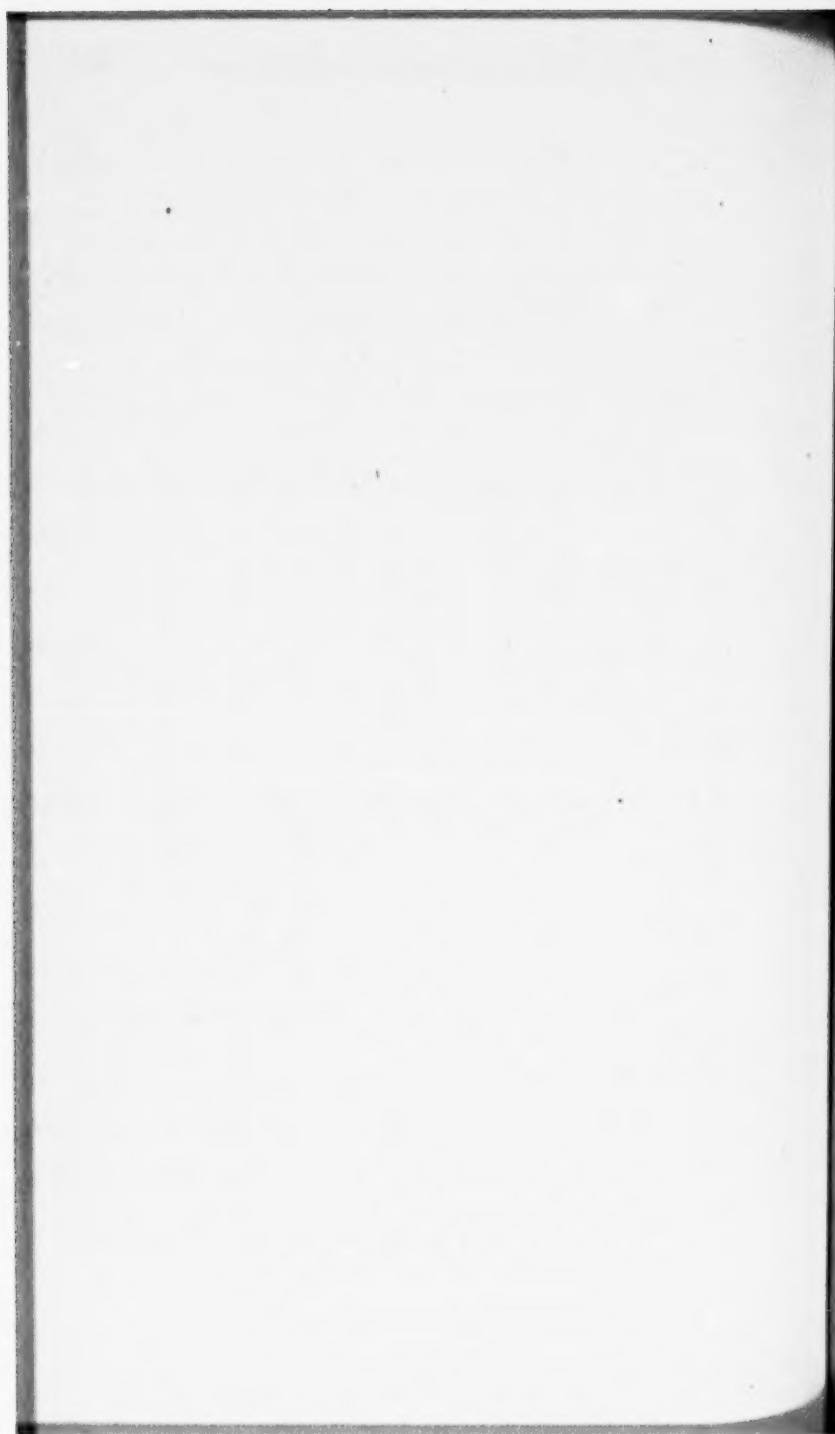
The witness produced a diagram showing the gross railroad earnings per hundred square miles in Michigan and per 10,000 population from 1883 to 1902; also another diagram showing the gross railroad income for Michigan as a whole and per mile as a whole, from 1883 to 1902.

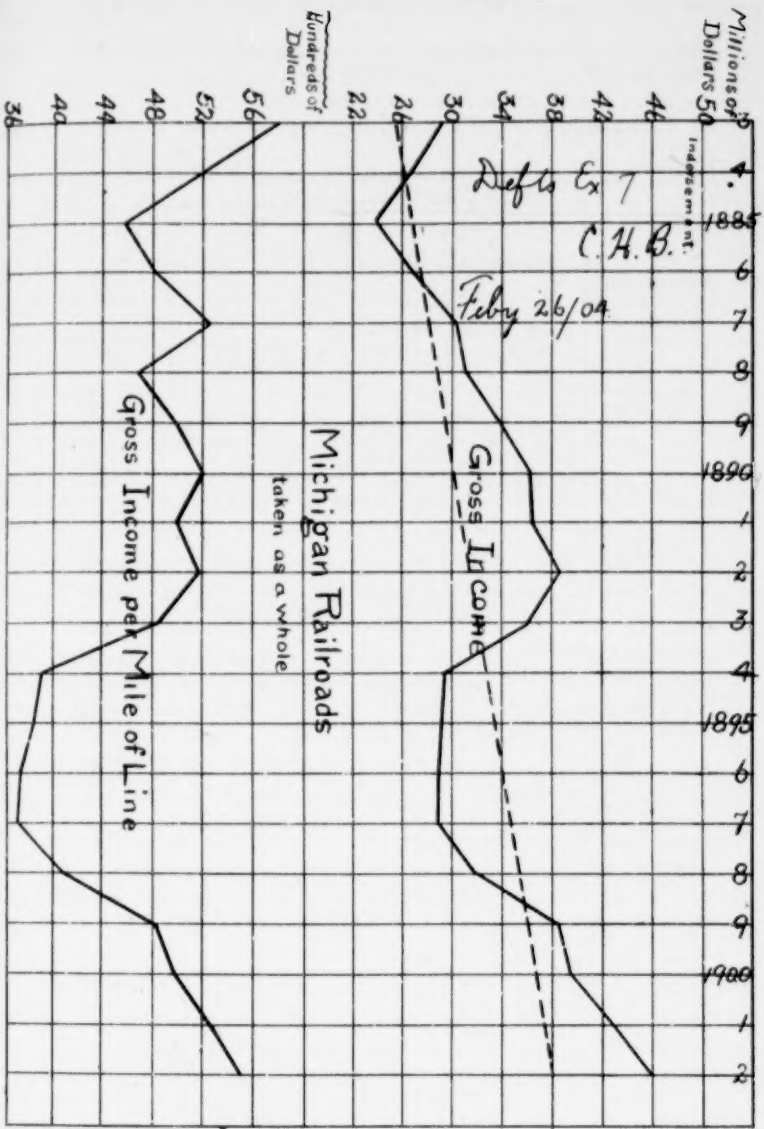
These diagrams were offered in evidence and marked respectively "Exhibits 6 and 7, February 26, 1904."

(Here follow diagrams marked pp. 767 & 768.)









No 291.2  
ms A 20 p 105  
p 105



769 (Witness resuming:) There is no indication that prosperity in railroad earnings since 1902 has declined or is seriously threatened. (Objected to as incompetent and irrelevant, simply an opinion of the witness, not an expert opinion, and depending on facts not introduced.)

The earnings of the Michigan Central for the five year period from 1898 to 1902 are shown by the following table:

Year.	Gross earnings.		Net earnings, entire system.		Net earnings, Michigan mileage proportion.
	Entire system.	Michigan mileage proportion.	Before taxes paid.	After taxes paid.	
1898..	\$14,090,827 41	\$8,165,522 15	\$5,952,939 91	\$3,544,855 00	
1899..	15,552,760 70	9,216,055 51	3,975,337 03	3,548,644 00	
1900..	16,780,150 10	9,910,322 57	4,017,865 52	3,550,659 00	
1901..	18,564,936 85	10,890,069 62	4,327,105 79	3,818,972 00	
1902..	19,106,255 86	11,718,301 25	4,187,813 64	3,638,751 00	\$2,516,050 00
Average, 5 years, 1898 to 1902.....				\$3,620,377 00	*\$2,503,345 00

\*The figure used in capitalization.

I did not use the Michigan figures of earnings and expenses reported to the railroad commissioner, in view of Mr. Burt's testimony that the assignment of expenses to individual lines was an estimate.

The earnings of the Pere Marquette for three years from 1900 to 1902 are as shown by the following table:

Year.	Entire system.	Michigan mileage proportion.
1900.....	\$8,305,585	\$7,641,382
1901.....	9,201,175	8,417,527
1902.....	9,995,375	9,190,046
Three year average.....	9,154,045	8,416,318

The physical value of the Michigan Central system as found by Mr. Cooley (including cash and supplies) is \$45,438,599. I applied my method for determining intangible values to this sum. (Under objection of incompetent and irrelevant) I find the non-physical value of the Michigan Central railroad to be \$18,259,880, and the total value (including cash on hand, supplies, etc.) to be \$63,684,479, on the second Monday of April, 1902.

Prof. Cooley's valuation of the Pere Marquette (including stores and supplies) is \$36,497,787. The non-physical value as found by

me on the second Monday of April, 1902, is \$9,988,383, and the total value \$46,496,170.

A capitalization of the Michigan Central net earnings at 3.75% gives \$67,905,940. A capitalization of the Pere Marquette at 5% gives \$49,905,940. (Underobjection as in competent) The conditions of the Michigan Central permit the application of the net earnings rule if that rule is applicable anywhere. There has been no violent fluctuation in its gross earnings. There is a difficulty from the fact that operating expenses are abnormally high on account of the practice of charging improvements to operating expense.

This would reduce the valuation and is taken into consideration in justification of the rate of capitalization.

The witness produced summaries of the results of the computations referred to for the Michigan Central and the Pere Marquette railroads, and the same were introduced and marked "Defendant's Exhibit 8, February 26, 1904."

The computations and exhibit referred to are as follows :

#### 770 Value of Michigan Portion of Michigan Central System.

##### "Inventory Plan Supplemented by Capitalization of Surplus Earnings."

Average annual net earnings (after deducting taxes paid) entire Michigan Central system—1898 to 1902, inclusive—5 years.....	\$3,620,377 00
Michigan portion of above on track mileage basis...	\$2,503,345 00
Annuity on physical elements at $3\frac{1}{4}$ per cent. of value (\$45,438,599).....	1,590,351 00
Remainder of net earnings to be capitalized...	<u>\$912,994 00</u>
Value of non-physical elements shown by capitalization of above remainder at 5 per cent.....	\$18,259,880 00
Value of physical elements.....	<u>45,438,599 00</u>
Total value of Michigan portions of Michigan Central system—property used for railroad purposes.....	<u><u>\$63,698,479 00</u></u>

<sup>1</sup> Should be \$17,789,200.00, Record 3603.

<sup>2</sup> See amended figures, Record 3603.

<sup>3</sup> See Thompson, Record 3328 32.

"Inventory Plan Supplemented by Capitalization of Surplus Earnings."

Average annual net earnings (after deducting taxes paid) entire Pere Marquette system—1900 to 1902, inclusive—3 years .....	\$2,286,507 00
Michigan portion of above, on track mileage basis...	\$2,242,303 00
Annuity on physical elements at 4½ per cent. of value (\$36,497,787).....	1,642,400 00
Remainder of net earnings to be capitalized...	\$599,903 00
Value of non-physical elements shown by capitalization of above remainder at 6 per cent.....	\$9,998,383 00
Value of physical elements.....	36,497,787 00
Total value of Michigan portion of Pere Marquette system—property used for railroad purposes.....	\$46,496,170 00

771 Cross-examination by Mr. POND:

The trackage rights in 14 miles, from Kensington to Chicago, were excluded on the ground that trackage rights were taxed in another State.

The stock and bond theory must be used with great care, and there are reasons why exclusive reliance should not be placed upon the net earnings system.

Two kinds of value inhere in property—physical and non-physical. I prefer to say that there is a physical element of value (instead of "property") and also a value in excess of the physical elements as determined by the engineer's inventory. The non-physical attaches to the physical.

I don't know of any use of the inventory method prior to 1902 in this exact form, except the appraisal of 1900. The theory is I think applicable to other kinds of business than railroad. I am not prepared to say there is any necessity for it. The assessor may get this element of value in another way. I have not thought we included an element, not included in getting the value of property used in other business. Wherever there is good will—a value due to organization—to that extent, there is a value in other business similar to that we are aiming to get by this method, in railways.

The non-physical element, with a great many other things, is in the nature of good-will. A manufacturing company has good will. This theory is applicable for getting at it for taxation purposes, if it is evident it cannot be reached in the ordinary method of assessment. By the ordinary method, good-will is reflected in many instances and made the basis of purchase and sale.

In railroad property it is necessary to follow this method to get at cash value, and assessors to get at the true value of commercial property, ought to take into consideration, its value over and above the physical. That might be done by this system, if reports could be obtained. I doubt if it would be as practicable as for railways. They haven't the established system of accounts or permanency of income independent of personal management that railways have. There is nothing in theory to make it impossible of application to manufacturing business.

A railway possesses a monopolistic character, that is, the commercial considerations under which it is operated, its relation to located business, and many other things make it a peculiar property,—peculiar in this, that commercial forces fail to diffuse or dissipate in it the more or less temporary—non-physical—values which from time to time appear in manufacturing and commercial concerns. During recent years, as a result of consolidations of otherwise competing industries, the same position a railroad assumes by nature, has been attained by few commercial industries. A peculiar non-physical value is inherent in railroad property and organization, different from the good-will of a commercial enterprise.

I have not used word "good-will," because it has no definite industrial or economic meaning. Organization of business of a railroad corporation does pass to purchaser,—it can pass between natural persons. If organization is due entirely to the owner, the value would be dissipated with his death, which differentiates it from the similar advantage of a corporation, existing in perpetuity.

Frequently upon change of ownership of stock, the managers and organization change, but seldom are all employes changed—the essential features of the railroad as a commercial concern are likely to continue.

This theory of valuation is applicable to trolley roads which have franchise values similar to steam roads, but not to such important degree. The use of highways is one element I had thought it different from ownership of right-of-way.

So far as the industrial character of the two situations is concerned, I think there is considerable difference. There is doubtless non-physical value in street railways; I do not wish to create the impression that an analysis of non-physical elements in the two cases would be identical. In my direct testimony I referred to the necessity of providing special means for valuing railway properties, since it extended over many miles, while manufacturing property is localized.

In this respect the tendency of trolley roads is becoming similar to that of steam roads.

Whether application of the system to steam and not trolley roads would result in higher basis for steam roads, depends on whether the assessors get the value of trolley roads by the other method.

I put this method in this particular form, in a letter to tax commission in October 1900. The taking into consideration of non-



physical property is very old. In that letter I named the franchise as element of non-physical value. I have not changed my mind.

There is competition in some kinds of traffic. In local traffic it is not great. There is some local traffic in which there is no competition. Referring to traffic between local stations as local traffic, if there is competition at competitive points, the rate at non-competitive points goes down to correspond. Traffic from local stations reaches substantially same market as from competitive points.

I supposed the question referred to passenger traffic,—in freight traffic there is immense difference between competitive and local rates. Though not so marked in this State as in other territory, the rates on passenger traffic are more or less uniform, under regulation, modified by influence of short mileage, where two points are connected by two or more railroads.

When I spoke of the benefit of economy possible by density of traffic I had not in mind economies due to superior management. The extent to which management would avail itself of the possibility of economies on account of increased density of traffic, might depend on the character of the management, but any management will, or can, increase economies and, from the nature of transportation business, must increase them as density of traffic increases.

This is one element of non-physical value. Increased density grows from increased population, wealth, industries which contribute to increased traffic; and increased traffic makes possible business at relatively less expense per unit of transportation.

The organization and vitality of industries served is a source of securing a higher net return, and increases value of property. A railroad which runs through territory of energetic people is more valuable than one running through territory sparsely settled, and industrially inferior.

Organization and vitality of a particular business, does not depend altogether on executive ability. As between individuals, organization and vitality of their business may depend on executive ability.

In a railroad, success is not, in the same degree, dependent on management. The brains of a man with executive ability, are an asset of a railroad that is paid for.

The organization of a business served is an asset to it. It is an element going to make the business succeed. The railroad company avails itself, as an asset, of the brains of a man managing a business, a railroad company serves, and that man avails himself as an asset of the railway. In business affairs, all depend for success upon the ability of people dealt with.

Northern railroads are relatively more valuable than southern, largely on account of the nature of employees and the people served. The organization of business served, in which the railroad is not interested, is a condition determining the success or failure of the railroad, and its selling price. Railroad business varies with the organization and vitality of concerns served. If Michigan schools

were disorganized for a generation, the railroads would not be worth much. This element makes the property valuable, and determines purchase and sale value.

The value pertaining to a railroad on account of a prosperous people would not again be taxed to the people. They would  
775 be taxed upon their own prosperity and property.

There is no inequality in assessing railroads, on account of added value through vitality and organization of industries served, because in assessing property of the business served, the value added by the railroad is taken into consideration. The law provides for assessing such a value against the possessors, requiring the property of both to be taxed at cash value.

In ordinary industries, subject to commercial rules, the law of supply and demand settles their value and on account of frequency of sales, the assessor can easily determine market value. In railroads there is no sale of the property entire. The existence of a railroad's non-physical value is proven by stable current income, exceeding the amount necessary to pay a fair return on a fair valuation.

In ordinary property, (not trusts or industrials) the industries can not enjoy, for an extended length of time an income over and above a fair return on the investment, and for the personal service of the manager. Abnormal profit in such case is not perpetual income, but temporary in character, and can not be made the basis of property purchased. Railway industry is of a sort that can have a perpetual income, in excess of a normal return on a normal investment value of property. In one case commercial forces dissipate the excess over normal return; in the other, they can not get at to dissipate it, and there is a fundamental distinction between railroad and other property, which justifies the attempt to get non-physical as well as physical values.

A system of taxation is I think unequal, if the same thing is not found in other property, as far as possible. I have been trying to explain, that (except—possibly—industrials) there is not the necessity for arriving at the non-physical in ordinary commercial manufacturing enterprises.

I should apply this method to a railroad as soon as its accounts showed surplus earnings.

776 This method does not amount to an income tax, but is a means of administering an ad valorem tax. It depends in part on net earnings, but its application requires average net earnings over a term of years, differentiating it from an income tax. The tax is not based on income, but upon value, which is, in part, discovered by an income. Discovering value, by simple capitalization for one year, would operate as an income tax.

An income tax takes the income, an ad valorem tax takes value, as the basis of assessment. I have used the income in part to determine value—it is still an ad valorem tax and the effect is not the

same as if put on income. It provides for taxation of property having no net income.

For Michigan Central, I capitalized \$912,944. This is not in the nature of physical property (unless money is physical) but a value that adhered to the physical.

The words "physical property" used in this method is what Mr. Cooley reported and what the engineer's inventory would indicate. I do not think any part of the \$912,944 is invested in property Mr. Cooley valued. This represents the income to road in excess of the allowance on physical elements. I don't know whether or how it is invested.

There is no implication in theory that the railroad company is not entitled to earn over a certain amount on the property's value. It is simply a method of getting at value. The theory involves the fact that the income a property bears is an element of its value. I allowed the company 3.5% on the value of its physical property.

I don't say this is all the company ought to be allowed on its physical property, as income. That, in judgment of the market, is what investors in stocks and bonds of the Michigan Central are content with, and therefore is the value the assessors have a right to place on the property. The bonds ally themselves to physical valuation, and the stocks to non-physical. In industrials preferred stock to the physical, common to the non-physical.

777 I made an investigation to find the net earnings of investments of the class of the Michigan Central, and assumed the State would be within reason, if it used the common rate for that class of investments. The question is, what is a proper rate to be allowed; the answer is given by the general market (Michigan Central and other securities). The result depends on my judgment resting on data presented.

It is not my opinion that what investors in Michigan Central stocks and bonds are willing to receive, is the measure of the value of the property for taxation purposes. What investors in the stock and bonds are willing to accept, together with similar evidence (market quotations on other property, etc.) enables us to determine what investments of this character are worth, considered from the point of view of income received.

Market quotations of securities of different companies, having substantially the same physical property, or costing the same to reproduce, might differ. Properties classify differently as commercial properties. I might, with two roads having equal physical property and unequal income, reach different results.

If the same rate were accepted for capitalization and the surplus net earnings were the same, the same result would be reached. I don't know whether investors in these securities, bought and sold on the New York stock exchange, pay the taxes.

If the investor pays the taxes he would want a little more than 3.5%. 16 out of 18 millions of the Michigan Central stock is held by one interest in New York, and about a million of the rest by

trustees, etc. The dividend has been 4% but the prices of stock show it necessary to invest more than \$100, to get 4%.

In estimating income the investor is willing to receive, I have for bonds, taken eight months prior to April 14th, and 4 months subsequent; the judgment relied on rests on an investigation back to 1898 and 1900.

778 A capitalization of net income, without regard to physical values is not applicable to all properties.

As some possessing value have no net income. Before it is possible to rely on capitalization, it is necessary to have sufficient net income to cover a fair return on physical valuation. Before one can judge whether or not the net income rule is applicable, it is desirable to have some idea of the value of the physical property.

I should have reasonable data for determining the value of physical property. For safe application there should be an inventory. Upon the valuation of the Michigan Central by direct capitalization of net earnings, I placed no great reliance. I did not, in its application, include physical values reported by Mr. Cooley, but satisfied myself (by reference to his figures,) that there was sufficient net earnings to support the stocks and bonds, or a reasonable return on physical property.

Where net earnings are not sufficient to support the physical property, capitalization of net earnings is applicable; but the extent of the deficiency would require further investigation, to determine to what cause it is due. The extent to which this plan is applicable depends on the character of the property to which it is applied.

I should have definite information of the value of the physical property.

In capitalization and net earnings at a single rate for a single year, I don't think there is any difference from income tax, except that in one the tax is levied on valuation discovered from earnings and in the other, it is levied on earnings.

Adams' theory is applicable to property in manufacturing business.

I don't know of its being applied in such a case. If not applied, a property value would be omitted, if, on application of the theory, any such valuation as is found in railroads were discovered. If the method not applied, excess of earnings over valuation of physical property would not be discovered and the question would

779 remain for the assessor to decide whether there would be a resultant value to the manufacturing corporation. Different conditions under which railroads and manufacturing institutions operate, might produce different results. Excess earnings of a manufacturing institution would be more or less temporary and would not result in as high a valuation as if permanent.

From the general fact that manufacturing institutions are exposed to competitive influences, which dissipate the excess of income, so that in future it cannot be retained as a permanent income, as in railroads, the assessor and the law are justified in putting railroads

in a different class from manufacturing institutions. If the advantage resulting from surplus income in manufactories was permanent, they should be treated the same as railroads. I can only tell whether permanent by a study of the situation, history and conditions.

Some manufacturing establishments have existed a long time, and have been exceedingly profitable. Competitive forces as a rule, have forced prices to a point where dividends are normal.

It had not occurred to me that in these corporations this non-physical element has escaped taxation, because the properties are sufficiently small and numerous that instances of sale and purchase can be found, sufficient to establish a market valuation which assessor follows. Market valuation takes into consideration all elements of value. The assessor I suppose in getting at the value of a manufacturing plant, values the premises primarily, but if the situation is an element of unusual profit, the value of premises will be a capitalization of that particular advantage.

Land is valued according to the value of adjoining properties.

In the usual method of valuation the non-physical element is not taken into consideration but in the great majority of businesses, there is no non-physical value of that kind existing in railways. In analyzing the elements of non-physical value I read from my letter of October 19th to tax commission, 4 points the 5th I modified.

This as stated in letter was:

780 " It includes a value on account of the organization and vitality of the industries served by the corporation, as well as of the organization and vitality of the industry which renders this service; this value consequently is in part in the nature of an unearned increment to the corporation.

781 In the sense that each industry is dependent on every other, all business includes the value there described in the sense that all industries get same ratio of profit on fare investment, they don't.

The elements of organization and vitality are productive to any industry. In capitalization of rent, these elements make their appearance in the valuation of property. Suppose lots are valued by starting with sales in the vicinity; the assessor exercises his judgment as to whether the property adjacent is more or less valuable.

It is not necessary for him to analyze whether productive of rent—the market analyzes that for him.

(By Mr. BUTTERFIELD:)

The Michigan Central R. R. property in Michigan is entitled to receive, in valuing property, after payment of taxes 3.5 % on physical, and 5 % on non-physical valuation.

In my opinion investments of the character of the Michigan Central R. R. should return to the investor 3.5 % on physical, and 5 % on non-physical, after payment of taxes.

One reason for the difference between the Pere Marquette R. R.

and the Michigan Central R. R. is, that the short time the Pere Marquette has existed constitutes a risk, not existing in Michigan Central R. R.

I would not say that the element of risk would disappear, if the railroad prospered continuously for 5 years. It depends entirely on the character of prosperity and contributive conditions.

If the Pere Marquette property had leaped at once into permanent position and to running without friction, and secured the same discipline and in other respects commercially had come to the situation of the Michigan Central R. R., I see no reason for applying a different rate.

The reasons for the difference in rates of capitalization relate in part to questions that must be examined by an expert railroad manager.

Everything going to make up the degree of prosperity enjoyed by a corporation should be taken into consideration.

I think it necessary to supplement knowledge acquired from public reports with other information. I don't think knowledge of the skill with which the railroad corporation is managed is so essential as the commercial conditions under which the road is operated.

The extent of discipline maintained in organization, is reflected in the report to stockholders and public officials, in the net earnings reported, and the degree of economy with which the company operated. I am not, from reports to public officials, able to assign a definite quota of the prosperity of the road to discipline, more than to other elements. I am, as between various railroads, able to measure the extent to which that and other elements have resulted in declaration of net earnings. I could get something of a judgment from reports, but a much better judgment is obtainable from other sources of information, *e. g.* the information from a man buying and selling the securities. It must be assumed that a bank taking or advising a purchase of securities of a road, has taken into consideration these elements so far as they can be determined.

Banking houses maintain statistical and investigating departments and recommend securities to customers, on the basis of this investigation. Other institutions avail themselves of auditing companies, and expert operators, who investigate property. If in examination of the books the expert discovers divergencies from normal, he would make that fact known to his employer, *e. g.* where too much coal is used by engineers.

I think the amount of coal used comes under head of discipline. Discipline, in matter of punishment for violation of rules of operation is reflected in reports, rendering it possible to judge therefrom whether high or low degree is maintained, though not public documents.

I could, from the books of the company, determine how a matter of discipline should affect rate of capitalization. I did not care to rest my judgment on investigation of public reports, so corroborated it by an appeal to market quotations, which are made up by the



people who have access to the information I am excluded from. In relying on quotations, I rely on the judgment of those who have access to information upon which sound judgment must rest.

In reaching the rate of capitalization, I rely on the conduct of persons, who, I understand and believe, have made investigation.

The proper rate for capitalization does not rest on quotations of a single property, but on quotations of many; the question is, what is a fair return for investments of the quantity and character under consideration.

Statements made by officers of the company pursuant to the agreement made at this hearing, influenced my judgment.

Q. If the Michigan Central R. R. were wiped out of existence and in 1903 it was reproduced at Mr. Cooley's cost, *i. e.* \$52,000,000 and money secured by selling the bonds, \$32,000,000 and stock \$20,000,000 and the road ready for operation on Jan. 1, 1904, do you think money could have been raised for the enterprise on a representation to the investor in stock that he would receive a dividend of the same rate as the interest provided for in the bond?

A. It is a more violent assumption than even a professor would care to work on.

I don't think a railroad would be able to sell stock and get money, unless it could assure the investor in stock a dividend in excess of the rate of interest provided for in its bonds. No representation of a promotor is equal to 30 or 40 years of an accomplished fact. Assuming that the stocks and bonds represent the actual cost of reproduction, the investor in bonds would be satisfied with less return than the investor in stock. There is an element of risk in stocks which does not exist in bonds, and an expectation of higher gain.

On the basis of the hypothetical question, that the stocks and bonds represented physical property, an allowance in rates used for annuity and capitalization, should be made for the fact that a larger return is due those investing in stock than those investing in bonds. It is difficult to assume that the physical value of a property that is in such commercial condition as to give final surplus, is as great as the sum of its stocks and bonds,—that is a very violent assumption. The probability is there would be no final surplus and no double rate.

If there should be a final surplus the first year, in determining the value for the second year by application of this rule, it would be necessary to have a double rate, and to allow to a portion of the physical property produced by sale of bonds, a certain rate, and to this portion produced by sale of stock a higher annuity—my mind hesitates in coming to a conclusion upon the assumption of a single year. If I took only the first year, I would be inclined to make an unusual allowance for depreciation on account of the fact that operating expenses would be unusually low, and surplus would not be such that the road would maintain. It is conceivable that an increase of business, as an enterprise grew older might make up for



increased operating expenses, and that there might be a maintenance of a uniform net surplus from operation for several years. This whole supposition presents itself in the copper range.

In the case stated, the probability is there would be no net surplus. It might be worth less than the \$52,000,000 cost. All along, I must insist, this assumption is contrary to all rational assumption, I cannot conceive it.

785 I cannot conceive that the question of stable earnings and sure returns can be applied to an industry, the moment it comes into existence. You must have a history before it can apply. The theory so far as non-physical value is concerned is not applicable the first year. Assuming the proposition laid down conceivable, \$52,000,000 would be the value. (Upon basis of this hypothetical question, counsel indicates variation in value and tax as follows :)

Previous year's net surplus.		Tax previous year.	Deduct return physical value at 4½%.	Net corporate surplus to capitalize.	Physical valuation on which 4½% allowed.	Non-phys- ical from capitaliza- tion net corporate surplus at 6%.	Total value.	Tax present year.
Year.	Including taxes.							
1904 a.....	.....	.....	.....	.....	.....	.....	a \$52,000,000	\$884,000
1905.....	\$3,824,000	\$2,940,000	\$2,340,000	\$600,000	\$52,000,000	\$10,000,000	62,000,000	1,054,000
1906.....	3,824,000	2,770,000	2,340,000	430,000	52,000,000	7,160,000	59,160,000	1,005,720
1907.....	3,824,000	2,818,000	2,340,000	487,000	52,000,000	7,960,000	59,960,000	1,019,320
1908.....	3,824,000	2,804,680	2,340,000	464,680	52,000,000	7,740,000	59,740,000	1,015,580
1909.....	3,824,000	2,808,420	b 1,820,000	c 988,420	b 52,000,000	c 19,760,000	71,760,000	1,219,920
1910.....	3,824,000	2,604,080	b 1,820,000	c 784,080	b 52,000,000	c 15,600,000	67,600,000	.....

(3489-3504)

a The first year of existence cost of construction taken as value.

b Rate here changed to 3½%.

c Rate here changed to 5%.

Witness testified, I take the position that your original assumption is a violent one, and you are describing a method entirely different from mine. In order to obviate these violent fluctuations, we take a period of years and average earnings.

Taking the actual ad valorem tax for the previous year is not my method. I have used in all cases average expense and income, the object being to avoid fluctuations otherwise resulting. I don't think a taxing system, resting on reports of a single year, can give the same results as one resting on results for a series of years.

If the computation were carried out indefinitely, the tax would be practically the same year after year.

It is impossible that corporate surplus should remain the same with an increase in gross earnings; that means the railroad does not take advantage of economies rendered possible by  
786 denser traffic.

"Q. If that would be true then I ask you to lay those elements aside of conceiving that there was any increase whatever in gross earnings but with the same economies practiced as the first year that business has gone on and shown this corporate surplus year after year?

A. That is contrary to the fixed rule of railway transportation, that is inconceivable. If you are going to give a case which is at all in harmony with the situation as it exists."

If, in the case stated, from the year 1908, the condition of the market, road and earnings should continue the same for 40 years and the road has no more prospect of success at the end than at the beginning (a violent supposition), I cannot see any necessity of changing the rate of interest.

There may be 20 conditions, and I don't wish to put a change in percentage on the basis of simply final net surplus. I cannot conceive of the surplus remaining the same, unless everything else remains the same,—you can't do it, and I refuse as a witness to take an assumption that is violent and contrary to reason.

Anybody that knows anything about transportation would not assume those figures. The assumption is so violent that it would not be for a moment warranted by railroad management.

Many considerations influence a change of rate of capitalization. There might be a reduction in rate, without an increase in net surplus, due to increased confidence of the public in the security.

"Q. \* \* \* Now if I have made no error in the computation my conclusion upon this hypothetical case, I understand you to be correct representation of the result of your application to it?

A. With the exception that I used averages always and that is all, otherwise it is correct.

787 Q. But in the case that I have assumed where the difference between gross receipts and operating expenses is the same each year then it would make no difference whether you used an average or took any particular year?

A. Except that the equalizing process would go on very much quicker.

Q. The result of your theory to the hypothetical case which I have put, which hypothetical case lays aside all influence which change the conditions from year to year and assumes a continuation year after year of the same condition, in order to test the exact influence of your system, or of your theory, it would appear that it would be possible for the same railroad property maintained at the same standard of perfection and earning the same gross receipts and having the same operating expenses for seven years would be placed upon the assessment roll at valuations varying from fifty-two millions to \$71,760,000 and in no two years would the valuation be the same, and in two years would the taxes be the same, am I right?

A. Still we are on the hypothesis, and with this rule on the hypothesis you have made, which is an impossible hypothesis, it is true. It is utterly impossible that a thing of that kind should happen in a railroad, it never has happened, and it never will happen and it does not lie in the nature of the railroad business that it can happen.

Q. Isn't this true, that in order to test the exact influence of your system of valuation and to compare the effect upon property for different years you must necessarily assume the existence and continuation of the same conditions in all other respects, otherwise no comparison could possibly be drawn?

A. Yes, and your figures for example have assumed that after forty years there is a jump in the confidence of the public so as to reduce the capitalization rate from  $4\frac{1}{2}$  to  $3\frac{1}{2}$  and 6 to 5.

Q. You have said that was correct?

A. That is not commercial psychology.

788 Q. You have said that it was conceivable that such a thing might happen without any change in the net surplus from operation?

A. I didn't know that I said that it was conceivable as a reasonable proposition that that would happen.

Q. You said certainly that it was conceivable, that your opinion would be that it would be proper to reduce the capitalization rate from  $4\frac{1}{2}$  and 6 to  $3\frac{1}{2}$  and 5 without any change whatever in the net surplus from operation.

A. Did you put those figures in?

Q. I may or I may not have put in the figures. You said it was conceivable that a reduction might be made?

A. Yes, sir."

The present differs from the 1900 system, in the rates used (1900, 4 and 6%); allowance in the present system for deficits on branch lines; addition of taxes to operating expenses (in 1900 hypothetical tax substituted for actual); using the average net surplus for 5 years (in 1900, 10 years); difference in assignment of earnings for 1902.

In 1900, I arrived at the average net earnings from operation for 10 years, before paying taxes, deducted from this for annuity on

physical property 4% plus 1% in lieu of taxes, and adopted this as the average rate paid by other property in Michigan. The remainder was capitalized at 6% plus 1% for taxes. My explanation of this is contained in my report to the State tax commission.

Witness read from report, page 9, as follows:

"In discussing the rates to be used, there are three points," and the third points read- as follows:—"It is necessary to consider next the rate accepted for capitalizing the final surplus, which capitalization is the value of the non-physical elements of the railway corporation. By referring again to the percentage above, it will be seen that 7% is collected for capitalization which results in giving a value independently of paying 1% to the State as tax and 6%  
789 returned to the investors, and the reason for allowing 1% for taxes has been stated in the foregoing paragraph," etc.

The separation of 7% into a rate of 6% and taxes 1%, was not made in my report to the State board of assessors for 1902, page 56.

The Michigan Central R. R. sheet, vol. 3, "Computations A, B, C, Michigan Central appraisal 1900," does not indicate that part of the 7% was taxes, and part capitalization.

It was understood from the beginning that the 7% was made up of the items of 6% capitalization and 1% tax. The report submitted to the board separated the two.

790 In 1900 we investigated and informed the legislature, whether railroads by the gross earnings tax paid a higher or a lower rate than was paid by other property.

The effort was to ascertain the rate of taxation railroads were paying on the cash value of their property, and to compare that with the rate which other property was paying; and we took into consideration the fact that other property was not assessed at true cash value. We were not at the time seeking for the true cash value of railroad property, as I understood it.

We were seeking to bring the properties to the same basis, and the object of adding 1% was to reduce the value beyond possibly what true cash value would be, so that a comparison between the railway and other rate might be proper.

The effort was to arrive at a modified cash value. We tried to make allowance for the increased rate of taxation resulting, thus reducing the value below what the market had shown to be true cash value to equalize it with other property. 1% was accepted because that was the average rate paid on the par value of other property. The report assumed the valuation of other property to be 65% of true value, and we figured that other property was paying 1% on true cash value.

(Witness reads from report.) "This conclusion rests upon the assumption that the rate of taxation is .1546 and that the average assessment of property is 65% of its total value. It is of course clear that .1546 on 65% of par value is the same thing as one per cent. of par value. If on further investigation the percentage upon which

this conclusion rests are found to be incorrect, the computation here submitted should be modified accordingly."

The form of computation resulted in a valuation of railroad property, free from incumbrance of taxation—on the same basis as other property.

791 With this explanation I say we were seeking to get the true cash value of railway property.

It is a question at what time increase of taxation affects valuation,—the 1900 computation assumed that its effect would be immediate. It is not true, however, that an increase of taxation immediately affects the saleable value of property on which it is imposed. To that extent the 1900 valuation would not be at cash value—it was below.

The problem of 1900 was different from that of assessing property.

I explained this system to the industrial commission at Washington.

I have never read that testimony. I have forgotten what I did explain. I adopted a tax rate in 1900 of .01546.

(Witness presented with report to industrial commission, vol. 9, page 380.) I am reported as saying that the average rate of taxation in Michigan was about .1475. I don't know whether this is reporter's or my mistake; also, "The average appraisal of property is about 65% of its value, therefore we reduce this to a par basis of 1%." I know of no official determination of the tax rate in 1900. The rate taken was that accepted by two or three tax commissioners.

I would not have been willing to stand by it as an answer to the question asked. The effort was to reckon with the actual average rate of taxation paid by other property, but in report I said:

"If on further investigation the percentages upon which this computation rests are found to be incorrect, the computation here submitted should be modified accordingly." Meaning the 65% and .1546%, and the 4 and 6% rate capitalization.

792 The 4 and 6% was low enough, under the conditions under which the report was made. It was not necessary to approach the question with the care necessary in assessing for taxation purposes, or if I were employed to pass the judgment of an expert on the valuation of a certain board. I never received any suggestion that it was desirable, if it could be honestly done, to squeeze the present valuation up. In 1900 it was suggested that doubts be resolved in favor of railroads. For this 1902 valuation I have not understood, that no doubts were to be resolved in favor of the railroads,—quite a number have been resolved in their favor. The 1900 valuation was done very rapidly.

Further investigation would not result in deduction of the annuity plus actual tax rate, as preventing the vacillation referred to in the hypothetical case.

The tax rate changes from year to year, and under this plan the rate would be changed to conform.

The 1900 system, with 1902 percentages, swells the net earnings by the tax actually paid, deducts  $3\frac{1}{2}\%$  plus the actual tax rate; capitalizing the balance at  $5\%$  plus actual tax rate.

(Counsel makes computation for Michigan Central R. R. and states result \$53,000,000.)

Counsel makes computation for Michigan Central R. R. for 1902 by 1900 method and rates, and reaches value \$49,538,000.)

In 1902 have used the earnings of the system as basis of computation; have treated the system as a whole, the taxes were taken out before any apportionment. In 1900 I used the reports of the Interstate Commerce Commission for taxes.

An allowance for deficits on branch lines has resulted in making a difference of 12 or 13 million dollars. Other things being equal, if we had followed the 1900 method the appraisal of the Michigan Central R. R. would have been 12 millions higher. On further study I thought it better to treat the roads as a system.

793 The 1902 application is in every respect superior to that of 1900. I can not segregate values on account of the conditions of the Michigan Central R. R.'s books. To apply the rule to Michigan Central R. R. as a system results in giving some branch lines a less value than Cooley's valuation.

Assuming the reports of earnings and expenses on branch lines to be correct, some fail to show earnings equal to the support of the physical property and payments of bonds on those properties.

The rule does not specifically state what would be done in case of a property showing a deficit.

In 1900 my opinion was (and is now) that where there was a deficit,—not sufficient to pay an annuity on the physical valuation,—I would reduce the physical valuation of Cooley, but not to its full capitalization. Cooley's valuation does not necessarily represent value whether there are earnings or not. I did not in 1900 report the property worth less than physical appraisal. I was not asked to state the physical valuation.

I would not say that in 1900 the appraisal of all railroads whose net earnings were not sufficient to pay an annuity on physical valuation, were too high; they may be too high or too low.

It may be proper to get the true cash value of roads having deficits, to make a deduction from the physical valuation, but whether it is or not requires investigation into the conditions and prospects of the road. In such case the method of capitalization of net earnings is in error.

(Witness' testimony before industrial commission on this point read.)

The 1902 assessment, as compared with the Cooley-Adams figures, is so different as to show there must have been a judgment on



the part of the board of assessors. The variation is great if you take road by road; in the aggregate it is not so great.

794 From this fact I conclude that no assessment has been based on my appraisal.

In the rate of capitalization, railroads are subject to classification with different rates. I have examined two roads and found two classes. My method may have been used by the State board of assessors, except the rate of capitalization, but I am sure it was not the case.

The study of the rolls indicates that there is no intimate relation between them, so far as can be seen on the surface. Any rule must be used judiciously in view of the conditions, including length of existence.

In the hypothetical case presented, if at the end of 7 years the road could be reproduced for 28 % less than actually produced for, we would take the physical value as found at the time, regardless of cost.

Vitality and organization of industries served is one element of non-physical value. Property along a railroad is affected by the construction of the road. If, in appraising the cost of reproduction, value is placed by reference to the value of adjoining property, there has been included in physical value an element of non-physical value, to the extent of the rental value of the real estate. This is not really different from the value of real estate, but suggests the essential element in land, independent of improvements on account of access to market. It is commonly said that the value of land, independent of improvements, is the capitalization of its annual rental value. If we regard rental value as a non-physical, the physical appraisal has included non-physical elements, but there is no difference between a purchase of land and renting it, except that a purchase may be called rent in perpetuity.

795 The value of railroad property for taxation is the same as for fixing reasonableness of rates. I never had occasion to make an examination for the purpose of determining value, as a test of reasonableness of rates. I have no settled opinion on that point. I am not sufficiently familiar to answer whether a railroad may have one value for taxing purposes, and another for determining reasonable rates, but I can hypothetically conceive one rule for one case and another for the other.

There would be this limitation to applying my theory to determining the value for the purpose of fixing the rate; in a sense it would be working in a circle, because our valuation depends on established rates and traffic. If rates were lowered by the State it might lead to a corresponding lowering of the value of taxation. The valuation would not remain the same under the reduced rates, unless there was a corresponding expansion of traffic. Rate is not the only element making up gross earnings,—lots of elements come in there.

"Q. If the rule of law is that a railroad company is entitled to charge

such rates as will yield it a fair return upon the value of the property devoted to the public service, would your system be a proper one to determine the value of the property devoted to the public service?

A. That depends entirely upon your interpretation of the value of the property upon which the road is entitled to its reasonable earnings.

Q. I use that phrase advisedly, the value of the property devoted to the public service, assuming that is the law, would your system be a proper one to be applied in determining the extent of that value?

MR. WYKES: We object to the question as calling for a legal conclusion and not proper cross examination.

A. I think the court could get a good deal of light by following this plan even upon a rate question."

796 This is a proper method of arriving at cash value for taxation, but I would not care to answer on a rate question without a great deal of study, which I have not given it.

In determining average net earnings I took the figures in the reports of the company for operating expenses. I assumed these to be legitimate, and made no reduction for the million dollars (the Michigan Central R. R.) I included in operating expenses for improvements. That a large portion of operating expenses have been in fact permanent improvements has influenced the rate of capitalization; and the theory applied to the Michigan Central R. R. has involved a determination of the propriety of charges to operating expenses. Operating expenses cover those expenses necessary to repair, maintain and operate the property.

By reason of the inclusion of operating expenses in permanent improvements I have allowed the corporation a smaller annuity on physical valuation than otherwise. It was either this, or to capitalize the sum paid for improvements, which would have resulted in capitalization in excess of \$20,000,000. The influence given to the method of bookkeeping on rate, was not a mathematical adjustment, but a study of the influence the method had on the mind of the investor. I assumed that the extent to which permanent improvements were charged to operating expenses was correctly stated by Com'r Prouty, of the Interstate Commerce Commission, in his opinion in proposed increase freight rates. One figure was corroborated by the company's report to the State board of assessors in 1902.

On page 37 it is stated that \$1,383,939.22 is included in operating expenses for permanent improvements, and \$210,000 paid for permanent improvements charged to income, being paid from current earnings.

(M. W. Thompson here called to prove correctness of computations found in Exhibit 8, Feb'y 26, 1904.)

797 "It is understood between counsel that the two sheets, one marked 'Michigan Central Railroad Company leased and

operated lines in Michigan,' and the other marked 'Michigan Central Railroad Company leased and operated lines entire system,' and furnished by Mr. Burt, auditor for the Michigan Central Railroad Company, shall be considered as evidence in this case as fully as though Mr. Burt had testified to it. Papers referred to marked Exhibits 1 and 2, Feb. 29, 1904."

Where a road is running in debt for current liabilities it can not pay, the physical value will not be the value for taxation, but should be reduced. It is impossible to apply a rule resting on earnings if there are no earnings; an inventory and an inquiry into the reason why it fails to pay operating expenses should be made.

If all reasons are legitimate I should think it without much cash value. If the policy of paying to stockholders everything earned, to the *exclusion of maintenance*, is followed very long the condition of the road would justify a higher rate of capitalization, because it would deteriorate. The expense for permanent improvements in the Michigan Central R. R. was not essential to keep abreast of the times. Those reported are in excess of what is necessary to maintain and repair property; all that are necessary for repair and maintenance are included under the classification of operating expenses.

I am not sure that in the case of the Michigan Central R. R. I would have increased the rate of annuity on physical valuation, if the million dollars included in permanent improvements had been paid to stockholders. The situation is, if the million dollars had been paid to stockholders, this rule would have added 20 millions to the property's value. The increased dividends, on account

708 of the transfer of this amount to the dividend fund, would not have caused a rise in stock prices equal to 5% capitalization of improvements, indicated by comparison. It acts practically as undivided dividends or profits in a bank; it changes the character of the stock, and makes the dividend almost a fixed charge; it gives to the holders of the securities an added commercial value, and causes them to place a higher estimate on the securities. In case of the Michigan Central R. R., whether times are good or bad, the 4% dividend is paid; the influence of the Michigan Central R. R.'s policy upon investors is to create confidence in it, and through this influence we justify the low rate of interest. I would not say we adopted the low rate of interest because of improvements, but the fact that the Michigan Central R. R. follows this method of financing is one explanation why investors place so high a valuation on its securities. The mathematical give and take, suggested by the question, does not appear to exist.

If the amount spent for improvements had been paid to stockholders I should desire to be guided by the result expressed in the price of the security, as to whether the difference in rate of annuity or capitalization should be made.

The fact that the Michigan Central R. R. for a long series of years has charged improvements to operating expense causes capitalization at a lower rate. We took the operating expenses, as reported,

and accepted the fact that improvements had been paid for in operating expenses, as explanation of the low market rate,—that and other things.

Money spent, during a series of years, for permanent improvements, appears, less deterioration, in the physical appraisal. If permanent improvements, costing \$50,000, had been built out of operating expenses, they would be that amount too much under the official classification.

799 A correction of the account would increase net earnings \$50,000, its capitalization at 5% would produce a million dollars and the company be called upon to pay \$17,000 on the million; which is the reason we did not do it. A road so strong, that in addition to operating expense, fixed charges and dividends, it can put a million dollars into improvements, is in better condition commercially, than one expending all its gross earnings for operating expenses, fixed charges and dividends—on that account the property is worth more because permanent earnings are more.

There is a difference of opinion among railroad managers as to the proper construction of the term "maintenance"; some contend it involves expenditures not only sufficient to overcome depreciation, but to keep the road abreast of engineering development. I do not care to be understood as saying that a discussion in that form has been entered into by railroad managers.

In a degree the policy pursued by the Michigan Central R. R. is necessary, to enable it to continue to pay 4% dividends in good times and bad.

If I were a railroad manager I would try to do this, but I would state definitely, (as does the Northwestern), that it is a permanent improvement.

My belief is that what we have a right to capitalize is the increment, not the improvement, the earnings resulting from improvement, which appears in subsequent operations.

It is not necessary to determine the legitimacy of charging improvements to operating expenses, in order to determine that a road doing this is in better condition than one not doing it, and that a purchaser will pay a higher price for securities of the former, than of the latter. We must determine the extent to which this process

800 has gone on, and the policy employed to determine what influence it will have on the rate of annuity and capitalization.

We have put in the record the amounts for three years and a diagram showing the extent, on the assumption that 7% is normal.

A determination of the extent to which charges have been made, possibly involves the classification of expenditures, but it is not necessary for such judgment to go into that abstruse analysis, because we find the average operating expense for a series of years, and on an average taken as normal, make our decisions.

## Redirect examination :

I have read part of Mr. Bowers' argument before the tax commission, which assumes that the net earnings of business come from two sources; profit on material and profit on labor; and denies net earnings, so far as profit on labor should be used as a basis of capitalization. The formal application of Mr. Bowers' rule is, that the profit on labor and supplies is equal to at least 20 per cent. of operating expenses, and that an equivalent amount must be subtracted from the net earnings, before capitalizing to find the value of the property.

I answer: First, whatever the source of income, provided it is permanent, it constitutes an element in the value of corporate property. Where cash value is sought it would not be proper to subtract any income it enjoys, which, if the corporation was sold, would be taken into consideration by the seller and the purchaser in arriving at value.

Mr. Bowers illustrates his point by the messenger service, where, from little property, a permanent income of \$25,000 a year, independent of management and expenditures, results. It is admitted, that under these circumstances it would be a good business transaction to buy the permanent annuity, flowing from the business at capitalization pertaining to this class of investments. The source of income is not the important fact, but its existence and degree of permanency.

Second, the word "profit" is used in Mr. Bowers' discussion with unusual meaning. It assumes that the excess, over the amount paid for wages, is profit, when in reality it is payment to the master mechanic for his services.

(Witness illustrates by diagram.)

B	
Owner- of land, or landlords.	Rent determined by laws of rent. C
Owners of capital, or capitalists.	Interest determined by the law of interest. D
Owners of organization, or entrepreneur or undertaker.	Profits determined by the success of the business; they may be regarded as wages paid by the employer to himself. E
Owners of labor, or laborers.	Wages determined by contract before the work is done.

A

"If we let the straight line A-B represent the total income from a business—and I am illustrating now a business of an ordinary kind—a certain portion, let us say from A to C, goes to labor in the form of wages, a certain other portion, from E to B, we will say goes to the owner of the real estate in the form of rent, another portion of this income, from D to E, goes to the owner of capital in the form of interest—and that word of course would cover dividends being the payment to the capitalist, there may be after these payments in any enterprise something left over, which is called profit. Now the character of these payments into which the general income is divided is shown if we place upon the other side of the line the classes that receive these various forms of income. Against rent there is the owner of the land, technically called the landlord; against the interest, the owner of capital, technically called the capitalist; against wages there is the owner of the labor, which we will call the laborer, and against the profit there is an industrial class which in France among French economists goes by the name of *entrepreneur*, and which in German is called the *unternehmer* and which in England is called the *undertaker*, but which in this country, owing to the funeral sound of that word, is called the *entrepreneur* or the undertaker with

the emphasis on the third syllable. This enables us to give a definition of profit. It is not necessary to go into the definition of wages.

Profit is technically defined as self-payment for self-employment—that is not, I would say, a complete definition, but it is accurate as far as it goes and that is as far as it is necessary to go to make clear the point. This being true it is evident that labor of all kinds includes mental as well as physical labor and that it receives its return either in the form of wages or in the form of so called profit; this at least is a correct statement of the case so far as the numerous illustrations in the pamphlet are concerned to show that people get a profit out of labor. It is not capital that gets the profit out of labor, using that word in the meaning of the pamphlet.

The profit in these illustrations then is the payment to the master mechanic for his own labor, and in the analysis of operating expenses used by railroads both wages and profit in the meaning of the pamphlet are included in the wages of employees and superintendents and salaries of officials; that is to say, the operating expenses in the case of a railroad cover all kinds of labor and all kinds of superintendence with the possible exception of the labor of the stockholders in voting for directors. The only activity so far as I know incident to the operation of a railroad not covered by the classification of operating expenses is the activity of the stockholders in electing directors.

Now, it seems to me, therefore, that every payment for labor is covered by the operating expenses and that the measure of the property of a corporation, which is made the basis of its security, is the difference between the gross earnings and operating expenses without any deduction of any sort; to say otherwise would, of course, be equivalent to saying that the laborers do not receive a value in wages equal to the value that they create by their labor, which would be equivalent to a confession that the wages under established rules at least are not fair wages.

Third, technically there is an error, as it seems to me, in this method of procedure in that the plan computes a profit upon expense; now, that is an unusual method of computation. Usually profit is computed upon the income, and while I lay no particular stress upon this point as touching the vital error of the pamphlet, it does lead to the rather peculiar result that the higher the expense the greater the profit."

802 Fourth, application of this rule would in many instances wipe out the value of property. Assume a business operating at 84%, then a profit at 20% of operating expenses, due to labor and supplies, which would be 16.8%, to be subtracted from net earnings before finding a fund to be capitalized, where there is only 16% independent of the deduction.

The application of this plan is indicated by a computation which is as follows:



Total value of Michigan portion of Michigan Central Railway system, computed according to a method proposed by Mr. L. W. Bowers, counsel for the Chicago and Northwestern rail-, in his brief upon railway taxation, submitted to the State board of tax commissioners Feb. 11, 1904.

Average annual gross earnings of the entire Michigan Central system for the five years, 1898-1902, inclusive .....	\$16,818,986
Average annual operating expenses of the entire Michigan Central system for the five years, 1898-1902, inclusive.....	\$12,726,771
Add (per Mr. Bowers) 20 %, so-called "profit" .....	2,545,354
Total to be deducted from gross earnings.....	15,272,125
Remainder, out of which to pay taxes and to get annuity to be capitalized.....	1,546,861
Michigan portion of said remainder assigned upon a track-mileage basis (ratio 69,145,972 : 1000,000,000) .....	1,069,592
Average annual Michigan taxes paid by said system during the said five years...	364,462
Michigan surplus to be capitalized...	705,130
Capitalized value of said surplus (which, according to Mr. Bowers' theory, is the entire value of Michigan portion of Michigan Central system, including both physical and non-physical elements)—ratio for capitalization being taken at 3½ % .....	18,803,467

803 The theory rests on the same conception of labor and wages, as Carl Marx'- system of socialism. In short, that the capitalist does not pay the laborer the value the laborer creates. The accepted doctrine of wages, at present, is that they are not paid out of capital in the sense that the capitalist supports labor, but that labor is self-supporting; so when a corporation pays laborers wages it returns the value they created.

#### Recross-examination:

Instances, combined labor exceeds the sum of the results of separate effort; that comes into existence with organization; it is the increment of productivity due to organization. I stated in my direct testimony, where I defined profit as self-payment for self-employment, that the amount received by a master mechanic, over that paid his journeyman, is in reality a payment to himself for his labor and experience; also in profit (remuneration to management) there is included increased productivity of laborers, organized in a compact body, as compared with the sum of value these laborers might produce working independently.

In my opinion, the perfection of adjustment of the wages of the laborer would require payment to him of a sum equal to his contribution to the corporation's gross income. It is an open question whether the net earnings of a corporation employing labor are in part contributions by employees, in excess of the wage paid; the decision depends on a determination whether the wages are just. If you don't pay your employees the full value of their services, and people buying your stock and property know you don't, and know, or feel confident, that you are not going to for 50 years, and that difference is going to them in bigger dividends, they will pay more for your property and your property is worth more. I don't think it possible to analyze the value a particular laborer contributes.

The illustrations in Mr. Bowers' pamphlet are misleading, as he takes up an industrial, where the relationship is personal, and then places the conclusions arrived at, without modification, to an industry with 50,000 employees and a highly organized system of superintendence and management.

It is impossible to ascertain the contribution of an individual employee to a railroad's gross income. A perfect adjustment of the wage question, under present conditions, is impossible. There is no such thing as absolute ethical adjustment. This being true, there may be a contribution of employees in excess of wages paid.

If this advantage is permanent,—a permanent income reflected in property value, the assessor must take the net income, whatever its amount or source. When you buy the property of the Michigan Central, you buy it with all attendant advantages. It is worthless except you have engineers. The value of a material thing is meaningless, unless you take it in connection with the use to which it is to be put. Value from the labor of employees attaches to the property.

The engineer and executive official are placed on the same basis, in classification of operating expenses, and I see no reason why they should not be in this connection, and there is no difference between the effect of managerial capacity and efficiency of labor, on physical property. If the advantage spoken of attaches to a corporation's property, it would be proper to take it into account in valuation for taxation, where the object is to tax upon the true cash value of property.

805 " Q. Then if the corporation which owns the property should see fit to lease the property in toto to some other corporation I take it that the value of the property for the purposes of assessment to the owning corporation would remain the same in spite of the fact that the lessee was receiving this advantage, because you say the advantage attaches to the property?

A. That may be true, but my plan makes provision for that in that it permits the rentals of all property not assessed to be deducted from the earning. My plan makes very careful provision for that situation in that besides taxes there is deducted from the earnings

before getting the fund to be capitalized the rent which would be paid by the operating company for the leased property, the theory being that that property would be taxed, whatever it might be, more or less, to the company that owns it."

Rent paid by the operating company to the lessor would be the lessor's entire gross receipts, and would be deducted in income account of operating company. For purposes of taxation I should see the character of the lease, whether in perpetuity, amount, conditions, etc.

The advantage a company owning and operating property enjoys, because its employees yield something to the gross receipts in excess of their wages, attaches to the property, and is an element of value for taxation. When two companies come together to make a rental all these facts would be considered in fixing it.

Q. If income of a corporation owning and operating property is solely a contribution of the taxable property, then that net income would be the fair rental value, and the owning company should receive the same whether it operated the property or leased it?

806 A. The net income—difference between operating expenses and gross earnings—would doubtless be fair rental value. The rental value would be determined as indicated, and cover all questions of earnings. Whether valuation of property for taxation the same against "a company," whether it operated or leased to another, would depend on rule followed in capitalizing rental, to determine value of property of A. The rental value commonly less than lessee proposes to make out of it, the parent company almost always seeks to get some advantage by the connection, *e. g.*, case of branch lines. A corporation seldom leases a single property; it leases several for purpose of organizing and grouping to create value greater than that of properties integrally. If sole motive of corporation leasing property to create new value not before existing, the value for purpose of taxation (to owning company) would be the same before and after.

Q. I am speaking of case where no connection involved. No question of further increased value; but where one corporation hires another's property for purpose of operation, without other elements?

A. The difficulty is, your assumption is contrary to possibility. Under those circumstances there would be no motive in parent company leasing road, if leasing company had today all earnings in rental, what does it want to operate road for?

I never objected to the statement that all earnings of the company came from operation of property. My proposition in answer to Bower's brief, under the interpretation of profit, is that earnings are contributed by taxable property, and there is no contribution to the net income of the company from efforts of employees in excess of their wage,—in this interpretation, property includes organization.

807 With the interpretation that taxable property includes all elements going to make up non-physical value, I think, all net

income is contributed by taxable property. I said, if the taxable property in its entirety were leased to another company to operate, the net earnings would be fair rental, because produced by taxable property. If the hiring company had the same gross earnings and operating expenses as the lessor had there would be no hiring company, because no motive to hire. The illustration seems to mean, shall we tax certain property to A, the same to B, when conditions are the same. Valuation ought to be the same whether in name of A. or B.

Q. Would not the same be true of Majestic building, Detroit; assume gross receipts of owner for rentals, who manages, collects rent, buys fuel, and hires janitor and elevator service, to be \$30,000 a year; that he pays for fuel \$5,000, labor \$5,000, making net receipts \$20,000, in your view, is all of that contribution taxable property? The \$5,000 for help includes fair compensation to owner for his labor.

A. The \$20,000 is income from rental of offices and rights from the ownership of building. I think a fair rental value to owner would be the amount he could make managing it himself, less the amount he would charge to himself as manager, which would be \$20,000 in the case put. If he doesn't put in any capital, either for hiring janitor or getting fuel, but pays out of proceeds.

Q. If the lessee operated building and had same gross receipts and operating expenses, he would get exactly what he would get from some other effort working for another, i. e., the wages charged up to the owner of the building as his compensation?

308 A. That is not quite correct. You are assuming a case in which the employee changes his industrial position to self-employment, has risks and takes responsibilities he did not have before—for this he gets the same compensation as the man who owned the building. If the motive of person previously employed at certain rate of wages be to work for himself, the motive would be simply the difference in yearly compensation he gets as wage, when employed for another and when employed for himself; further, he speculates on the increased demand for offices and rate,—another motive.

The man who takes risks gets more than the laborer. In answering, assume the \$5,000 fuel purchased and consumed was furnished at cost.

Q. If in commerce and business, it is reasonable to say that owners will be entitled to receive for that fuel a fair increase over the price paid, isn't it true that a portion of the \$20,000 came from that, rather than the taxable property?

A. Yes—that changes the situation as I understood the question. It seemed to me to be a little violent to call the \$20,000 rent, because a man who puts up a building must provide ground and capital for building, invest in supplies, and where he sells heat to occupants in excess of cost he is a manufacturer of heat and makes profit on

manufacturing. That must be taken into consideration in fixing rental.

A railroad company is, to the same extent, a manufacturer of heat in passenger cars to keep passengers warm. The profit on sale of heat is one reason it was thought wise to increase the valuation of the Michigan Central R. R. by material and supplies on hand. As that necessitated expenditure of money for capital I thought it proper to allow a return for material and supplies on hand. The  
809 profit derived from consumption of fuel and furnishing heat to passengers is included in net earnings.

Q. Should this profit be deducted before capitalizing to find the value of the property producing net earnings?

A. I was not assuming material and supplies is taxable property.

Q. I am not speaking of material and supplies on hand, but of those consumed during the year in the operation of the road?

A. As you put it, it does not represent facts. The fact is that material and supplies on hand are regarded as capital the railroad must devote in the process of operating the road; they don't sell those supplies; they pass them through the operation; get their earnings out of the difference between cost of service, taking everything into consideration, and the price paid. I don't think there is anything peculiar in the profit on material and supplies, compared with profit on locomotives or stations. The whole thing is right there, and we include all. Full earnings of the capital are found in the net earnings. If we take net earnings as the basis of estimating capital we get the right result.

I thought we had assumed taxable property to be capitalized net earnings.

Q. We have—capitalization of net earnings from taxable property, not capitalization of net earnings from consumption of coal.

A. These are a part of the whole thing. Railroads sell service—transportation; they don't separate specific profit on coal, etc.

I can't see why it is sound analysis to separate earnings from coal, more than earnings from locomotives or engineers. Earnings come from the combination of the whole. If it is fair to allow a  
810 corporation to sell coal to public for more than it pays for it, whatever profit is derived from selling the coal is in net earnings.

Q. If it is possible to ascertain the amount of profit on coal in net earnings, should it be deducted before capitalization to find the value of taxable property?

A. No, sir; no more than right-of-way, locomotive or any other element used in operation in attaining net earnings.

Q. If a portion of the net earnings is derived by profit on the use of equipment hired, should that profit on hired equipment be deducted before capitalization?

A. No, sir; not at all. If owning company pays taxes on locomotive, and there be an increase above rental, resulting from that locomotive, to leasing company, it would go into the net earnings

capitalized. The capitalization of the increment will not produce a value to a locomotive some one else owns and pays taxes on.

Capitalization of net earnings is equal in amount of money made out of it. The question presented to the corporation will be, whether the rent on the locomotive is greater or less than the interest on bonds sold to secure money with which to buy it. Earnings from it would be the same whether owned or leased, and would have the same effect on the net earnings of the company and the value of taxable property. Under the assumption, the value of the taxable property of the corporation is the same whether the locomotive is owned or hired. The leasing company, on account of its relation to traffic, lay of right-of-way or other difference, may make use of a locomotive superior to that of the owning company, and this margin is the basis of the increased net earnings referred to, and is reflected in the increased value of the property. Under no other assumption is a lease of that kind possible.

811 Q. In Michigan Central R. R. car mileage balance for 1902, \$500,000, do you assume that there has been no profit to the hiring corporation by using these cars above payment for their use?

A. This payment is included in operating expenses, and works out in the final result of net earnings. The earnings of those cars, where there is a balance on the credit side account, would cause an increase in the valuation of railway properties owning such cars. If there are any earnings from foreign cars, they are capitalized to find the value of the Michigan Central R. R.'s property. There are no earnings of foreign cars by themselves. In the existing situation you have earnings for carrying your traffic, and to the extent that foreign cars contribute to those net earnings they are included in capitalization.

Q. Referring to annihilation of physical property for taxation purposes, where operating expenses are more than 84 per cent. if a railroad company receives increment from labor, material and foreign cars going into net earnings, and net earnings are not sufficient, in excess of increment, to show the value of taxable property by capitalization, would it be true that the operation of road is not being economically carried out, or was not a successful enterprise?

A. This proves that temporarily somewhere the property is not valuable, and not a success at that particular time. They may have put their property there knowing the country is to develop in the future. It does not mean that it is a bad financial enterprise, but simply that it does not show net earnings. Taking the books solely, knowing nothing about prospects, I would say it was not a success,—no person would judge on that basis.

812 Q. If an examination of the books, knowing nothing about prospects, indicates that road is not successful, would it be fair, in the application of Mr. Bower's suggestion, to divide the element of failure between contribution from taxable property and other items he suggests?



A. I don't think any help could come from that process of analysis. A road, situate as you have described this one, would probably be less than physical value.

813 HENRY C. ADAMS re-called as witness for defendant, testified as follows:

Direct examination by Mr. BLAIR:

Q. Since you were on the stand last, have you been examining other railway properties than the Michigan Central and Pere Marquette with reference to fixing non-physical values upon the same plan followed in 1900?

A. I have examined with some care all the roads which appear in this suit and have not gone outside of those roads and have confined my attention primarily to those whose earnings are capable of supporting a value in excess of the physical valuation as found by Mr. Cooley.

The roads which under this statement it will be necessary to report upon in answering your question will be the Ann Arbor, the Detroit & Mackinac, the Duluth, South Shore & Atlantic, the Grand Rapids & Indiana considered as a system, the Grand Trunk Western, the Manistee & Northeastern, the Michigan Central already has been reported upon, the Minneapolis, St. Paul & Sault Ste. Marie, the Pere Marquette has already been reported upon; the Pontiac, Oxford & Northern and the Sault Ste. Marie Bridge Co.

I have not fixed non-physical values upon certain of the railway systems like the Lake Shore & Michigan Southern, the Chicago & Northwestern and some other roads, owing to the paucity of reliable data which these roads furnish to the State railroad commissioner of Michigan, and partly also to the peculiar conditions under which these roads operate.

I might perhaps say in the case of the Chicago, Milwaukee & St. Paul that two years ago I secured from the auditor of this road a special report for a series of years upon their Lake Superior division which gives the earnings and expenses upon a property that seems to be fairly well segregated from the main property and divided between the two States of Wisconsin and Michigan; upon that report no intangible value appeared two years ago and the situation was not materially changed this year and upon cursory examination I inferred that there would be no intangible value this year. I did not, however, get a corresponding special statement this year for that Lake Superior division.

In the case of the Chicago & Northwestern the condition of the traffic is very peculiar. It appears to me that the Michigan portion of the Chicago & Northwestern although connected with a large property, is almost an isolated property and upon as careful an examination as I could make I was led to the conclusion that the appraisal of the State board of assessors was a fair appraisal; there



was no information before me that was not before them and I acquiesced in their judgment of that property.

Now that leaves the Lake Shore & Michigan Southern; the question of valuation of this property is not so much a question of the measure of the value as the location of the value. It too is a property that I think unique so far as the railway situation in Michigan is concerned. Its through line, that is, its important line—  
814 not what in the reports is called the main line—lies in Illinois, Indiana and Ohio; the bulk of the traffic, the east and west traffic, goes over these lines, and then from this as a backbone there come up into Michigan quite a number of feeders, branch lines, which are of importance to the company primarily because of the traffic which they bear to the main line system upon which it gets the haul east and west. Two years ago I tried to make something of a special investigation of this property and sent a man to Cleveland for that purpose, but he could get no information, and in short the avenues of communication were very carefully and courteously closed.

The reports to the State railroad commissioner are in my opinion unsatisfactory for any sound judgment as to the value of this property. Manifestly a method of valuation which rests upon earnings and expenses in any degree whatever must start with full, complete and systematic reports. The absence of data then, in short, is my reason for refraining from expressing an opinion upon the value of the Lake Shore & Michigan Southern property in Michigan.

In connection with the Chicago, Milwaukee & St. Paul, I acquiesce also in the valuation of the property by the State board.

Q. What do you mean by the word "acquiesce"?

A. I mean that in my judgment they have gotten the value about where it ought to be, an opinion of course which might be modified by information.

I have here a paper which gives the information relative to the assessment of railway properties in this case rather completely; I will explain it though, and not read it in detail.

It gives first the so-called Cooley-Adams appraisal of 1900 and the assessment by the State board of assessors of 1902, and the increase or decrease by roads of the assessment of 1902 over the Cooley-Adams appraisal of 1900. This is followed by the Cooley-Adams appraisal of 1902, that is, if that be the proper phrase to give to this information.

This too is followed by the increase or decrease of the 1902 appraisal over the 1902 assessment.

The table then gives the 1903 assessment of the State board of assessors followed again by comparisons showing the increase or decrease of the assessment of 1903 over the assessment of 1902.

Referring now to the Cooley-Adams appraisal so-called of 1902 I have called mine "appraisal" all the way through, and the board's "assessment."

Mr. BUTTERFIELD: Note an exception to this as incompetent and irrelevant.

Since my former testimony was given Mr. Cooley has modified the figures for the physical valuation of the Michigan Central and the Pere Marquette roads from the figures handed me when I was on the stand before, which necessitates a modification of the final result. The following are the corrected figures:

Michigan Central, entire system.....	\$46,101,011
Non-physical elements.....	17,789,200
Aggregate valuation .....	<u>\$63,890,211</u>
Increase over 1902 assessment.....	<u>\$18,900,211</u>
Pere Marquette system, including cash and supplies,	
physical valuation .....	\$37,130,276
Non-physical elements.....	9,523,823
Aggregate valuation .....	<u>\$46,654,100</u>
Increase over 1902 assessment.....	<u>\$20,654,200</u>

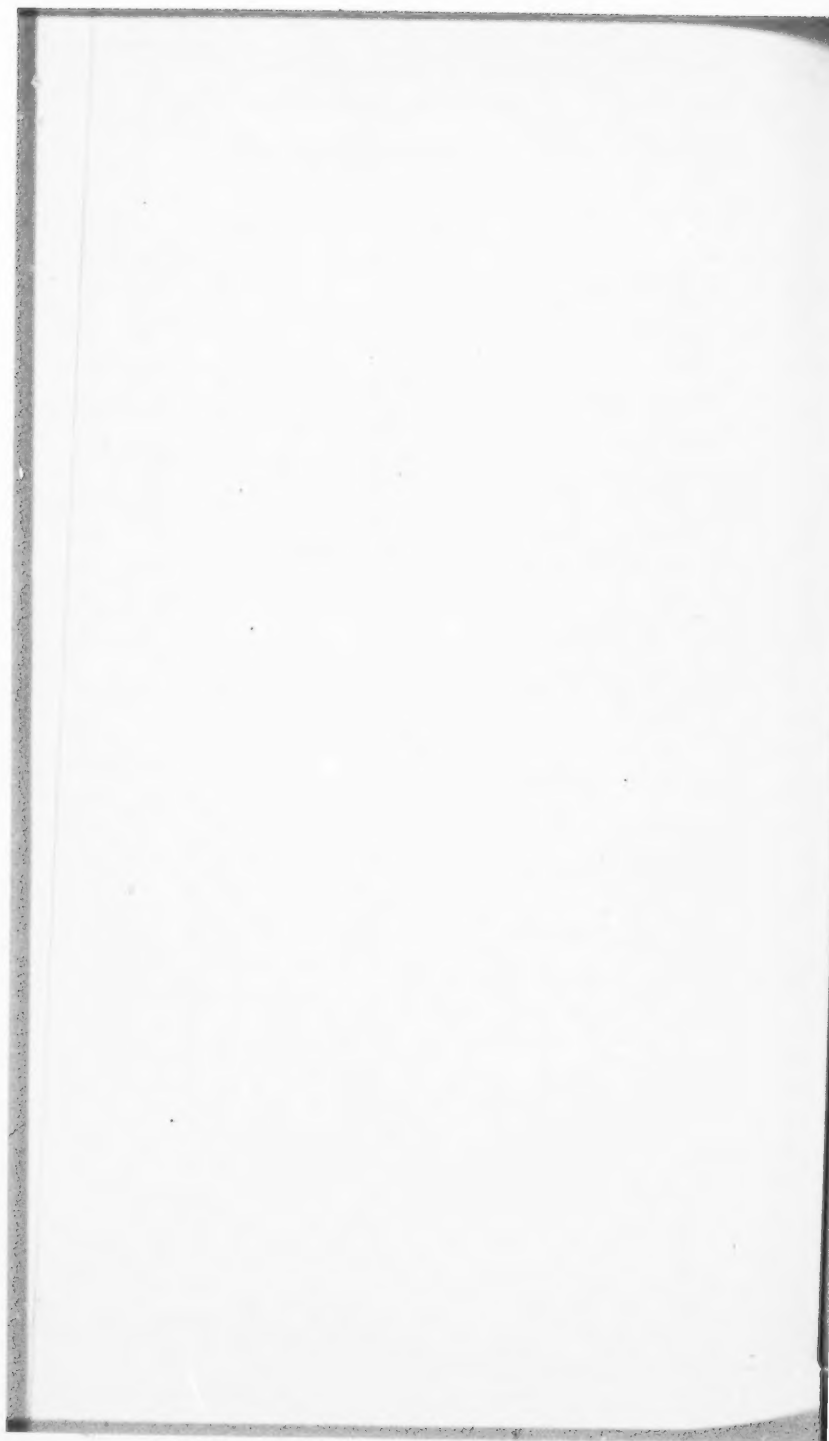
815 Q. Now with reference to the Copper Range, what disposition did you make of that property?

A. I left that as the State board of assessors placed it in 1902. It is a new property which has advanced in its gross and net earnings very rapidly since it began business, and the judgment as to what this property is worth depends so largely on the probability of the continuance of those earnings in the future that I thought the valuation ought not to be made exclusively upon the basis of the returns of earnings and expenses, and for that reason I accepted the valuation of the board. There are a good many points about this property which it would be necessary to take into consideration in addition to the data furnished by their reports.

Q. Do you care to say anything about the Mineral Range?

A. The Mineral Range also presents a rather peculiar situation. The physical valuation of the Mineral Range was raised. The Mineral Range also took in the Hancock & Calumet which two years ago by its reports showed a non-physical valuation but which seems to have lost some of its business as indicated by its reports. This road is a road which depends very largely upon the mineral supply and as in the case of the Copper Range I should not be willing to express a final opinion upon its value except upon a definite investigation upon the ground or from those who know it more fully than one can know the property by the reports. So far as I can see, the assessment of the board is a fair assessment.

**FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED**



Mr. BLAIR: We offer this in evidence, being a comparison of the Cooley-Adams appraisal of 1900 and 1902 with the assessments of the State board of assessors for 1902 and 1903, being the paper referred to by the witness in his testimony.

Paper referred to marked "Exhibit 1, April 2, 1904."

Mr. BUTTERFIELD: That is objected to as incompetent and immaterial.

(Here follows comparison of Cooley-Adams appraisals for 1900-1902, marked page 816.)

## 817 Cross-examination by Mr. BUTTERFIELD:

I followed practically, the same method with these roads as with the Pere Marquette and Michigan Central. I modified only as necessary, on account of changed conditions.

In the case of the Ann Arbor, I took the net earnings of the entire system, and deducted a sum to support the value of the Toledo terminal. The remainder equals the earnings necessary to support Michigan property, to which the Cooley-Adams plan applied. I got information of the value of the terminal from the report to the State board of assessors, and the hearings before the State board, and tested to see whether fair.

I allowed a million and a half for the Toledo property (practically all the Ann Arbor road outside of Michigan). The sum of the Cooley appraisal and this would be the total physical value of the Ann Arbor road.

After ascertaining the Ann Arbor net earnings, I deducted an annuity, sufficient to support the  $1\frac{1}{2}$  millions at 5 per cent. I then deducted from the remainder an annuity on physical value as determined by Mr. Cooley, for 1902, at 4.25 per cent. and capitalized the balance, to determine the Michigan non-physical, at 6 per cent. The 5 per cent. used to ascertain the annuity to support the property outside of the State, seemed fair in view of the rental the property paid or secured, when we took into consideration the use made by the Ann Arbor R. R. of the terminal.

This was not a definite mathematical calculation. I adopted 4.25 per cent. on property in the State, in view of market quotations on the 4 per cent. bonds; (being practically all the bonded indebtedness of the road for 4 or 5 years.) For 1902, earnings to investors would be 4.7 per cent. According to quotations for fiscal year ending Aug. 9, 4.09 per cent.; 1901, 4.14 per cent.; 1900, 4.38 per cent.; 1899, 4.41 per cent.; making the average about 4.25 per cent. I was influenced in the 6 per cent. used, to determine non-physical by the fact that I gave the Pere Marquette 6 per cent. The rates 4.25  
818 per cent. and 6 per cent. would make the Ann Arbor of a little higher class. I found sufficient record of Ann Arbor quotations, to enable me to determine the average price with abnormal conditions eliminated.

Sales were of sufficient number to satisfy me that they were a fair representative of value; examinations were made by Mr. Thompson, though I made comparisons and examinations myself.

For Detroit & Mackinac, I used 4.5 per cent. and 6 per cent.

I would regard the Detroit & Mackinac as allied to Pere Marquette. It is not possible to secure as full published reports here, as for the Ann Arbor or Pere Marquette; my study of the conditions of the road and investigation among New York business men led to the conclusion that this is a fair rate for the Detroit & Mackinac. The conclusion was mine.

I first went to New York. Talked the matter over with the ex-

pert accountant employed by the State, and he worked with a complete understanding as to the method of procedure and basis of judgment, and reported to me in detail, and the judgment is mine, on data brought to my notice. The rate is my judgment, influenced by the opinion of a Wall Street expert—Mr. Lisman, whose judgment was believed to be reliable. I have not accepted, without making the judgment our own, the advice of Mr. Lisman.

He was sworn in this case, but not interrogated on the subject of the Detroit & Mackinac property, and the information received from him is apart from the testimony, and all information influencing my judgment is not in writing.

In the Detroit & Mackinac, Mr. Thompson, after investigation, related the facts, and I made the rate.

In every case I made the rate, but before it was made, Mr. Thompson made as complete a report as he could on what he learned on his eastern trip. What the rate ought to be was discussed freely;

Mr. Thompson has been treated as competent to have an opinion, and his views have influenced my judgment; he has been more than an expert accountant.

I used the phrase that Mr. Thompson was competent to express an opinion, in connection with the interpretation of market quotations. The final result is based, in part, on the opinion of Mr. Thompson, as well as my own, resting on all information we could secure.

For the Duluth, South Shore & Atlantic, the rate of 5 per cent. for physical and 7 per cent. for non-physical was used. I used the average net earnings for five years, exclusive of taxes.

Average gross earnings for Michigan for 5 years were taken as \$2,133,229.25, being from reports to the railroad commissioner; accepting railroads' figures for apportionment of gross receipts and operating expenses.

Deducting the average operating expenses for 5 years, less taxes (\$1,314,135.14) and tax (\$57,728.00) leaves Michigan net earnings \$761,366.00; deducting from this an annuity of 5 per cent., on \$9,553,688.00 (Prof. Cooley's value stores and supplies) or \$283,682.00, leaves \$447,000.00, which, capitalized at 7 per cent., gives the non-physical value \$4,052,600.00.

In all cases I added the item cash and current assets to Mr. Cooley's valuation, and have taken track mileage figures rather than wheelage.

I do not with the Lake Shore, concur in the values fixed by the State board for 1902. I have no opinion because no figures were available.

A computation of the value of this property in Michigan, on the basis of reported earnings and expenses, does not give the State its proper share of value.

If I believed the reports, I could apply the rule mathematically.



820 For the Grand Rapids & Indiana system, I used  $4\frac{1}{2}$  per cent. for physical and 6 per cent. for non-physical. Quotations, with ratio of operating expenses, was basis for my judgment. Operating expenses were 70 to 72 per cent. before taxes paid; when I speak of operating ratio, I compute it before payment of taxes. Lowering the operating ratio has a tendency to raise the rate of capitalization.

A higher rate than 65 to 70 per cent., according to the character and density of traffic and condition of the road, would indicate that operating expenses covered improvements giving peculiar protection to those who receive interest and dividends, and adding to value of the securities. Except for new roads, peculiar conditions and traffic, where operating ratio exceeds 70 per cent., I assumed that operating expenses include permanent improvements. To classify roads, one first element taken into consideration, is the nature and density of traffic.

On the Duluth, South Shore & Atlantic, the probable operating ratio was 62 per cent. The Duluth, South Shore & Atlantic is allied to the Canadian Pacific. I infer they keep their accounts on English and not American theory, making operating expenses less. I acknowledge this by giving them a higher rate of capitalization than a quotation on bonds or securities would justify.

There is no mathematical basis for the weight given to these various considerations in fixing rate. The exercise of judgment has been systematic, and followed in definite order, so no elements would be overlooked.

For the Grand Trunk Western R'y, I used 4 per cent. on physical, and 6 per cent. on non-physical, considering it different from both the Michigan Central and Pere Marquette. The fact that the Grand Trunk is connected with an extended railroad system, outside the State, did not influence valuation. In 1900 I became satisfied that no value created by the operations of the Grand Trunk Western were carried into Canada.

821 The question does not arise with Indiana and Illinois, because the computation rests on reports covering Indiana and Illinois; assignment is made to Michigan on a track mileage basis. The amount of mileage outside of the State, as compared with amount in, justified ignoring an annuity to support the Chicago terminal. In the Ann Arbor the terminal is close to the State line; in the Grand Trunk only about 67 per cent. of the aggregate mileage is in Michigan.

The 4 per cent. resulted from a study of market quotations. In my mind the fact that the Grand Trunk is connected with lines outside of the State, did not influence the result of value. I may have erred in not taking that into consideration.

In using average market price for securities, the fact that the average price is influenced by the fact that the system in Michigan is connected with a larger system outside of the State, would have influence upon the value; from internal evidence of operations of

property  
not be i

The i  
depend  
property  
the prop  
connect  
an influ  
and the  
earning  
tral's co  
capitali  
large an  
lead hi  
consider

The  
comes i

822

connect  
elemen

In e  
bilities  
tions.

The  
rather  
of it,  
throug  
tral R  
the N

In t  
The fo

Michig  
Pere M  
Ann A  
Detroi  
Duluth  
Grand  
Grand  
Manis  
Minne  
Ponti  
Sault

property,—independent of market quotations, the same rates would not be indicated.

The importance of the meat and grain traffic of the Grand Trunk depends on its connections. The fact that property is part of a larger property is taken into consideration and reflected in the capacity of the property to earn. The fact that the Grand Trunk Western is connected with the Grand Trunk system outside of Michigan, has an influence on the extent of non-physical, through earning capacity, and the same is true with Michigan Central through increase of its earning capacity, by virtue of through traffic. The Michigan Central's connection with the New York Central, causes a lower rate of capitalization in this way; connections of a road which guarantee a large and permanent income influence the investor in its securities, lead him to pay more for them;—investors take these matters into consideration.

The influence on the value so far as it depends on connections, comes in, in earnings on which the rate is computed,—these connections influence rate capitalization, as earnings influence market quotation of securities. The dense traffic on Michigan Central main line, is in part secured on account of outside connections, and it is impossible to ignore that fact—it is one of the elements.

In estimating non-physical value, the extent, sources and probabilities of continuance of earnings involve considerations of connections.

The investor looks to the amount and permanency of earnings, rather than connections, and that is the important thing. We judge of it, in part, by the connections of the road and its past history,—through stability, of earnings. My valuation of the Michigan Central R. R. is influenced by the fact that it has contract relations with the New York Central.

In the Manistee & Northeastern, I used 5 per cent. on physical. The following table indicates the rates of capitalization used:

Road.	Physical per cent.	Non- physical per cent.	Record.
Michigan Central.....	3.5	5	3396
Pere Marquette.....	4.5	6	3396
Ann Arbor.....	4.25*	6	3608
Detroit & Mackinac.....	4.5	6	3610
Du'uth, South Shore & Atlantic.....	5	7	3615
Grand Rapids & Indiana.....	4.5	6	3620
Grand Trunk Western.....	4	6	3623
Manistee & Northeastern.....	5	8	3629
Minneapolis, St. Paul & Sault Ste. Marie.....	4.5	6	3629
Pontiac, Oxford & Northern.....	5	7	3629
Sault Ste. Marie Bridge Company.....	4	4	3629

\* Five per cent. to support Toledo terminal.

I used 4 per cent. on both physical and non-physical for Soo Bridge Co., because the income is contractual, sure and not exposed to exigencies of business. Had income been exposed to competition, so that investors were exposed to risk, they would have been entitled on non-physical to a higher value.

The rate on physical is that shown for all similar properties, and the return investors insist on as net revenue for similar properties not well advertised.

I did not make the figures myself. I have relied for accuracy on the computations of Mr. Thompson; all were done by my direction in each case; the rates were first determined and the results are mathematical computations on those rates.

As to whether a computation made and abandoned and another rate used, I think that on Ann Arbor, I first made a rate of 4.5 per cent. instead of 4.25 as finally used. In trying to bring the properties on an equitable footing, compared with each other, I could not help glancing over various rates and seeing what the results would be. The properties have many different qualities, and that is one way of testing the relative importance of various elements entering into the problem. The Ann Arbor rate was modified on more careful study of the market quotations. After I had used 4.5 per cent., Mr. Thompson called attention to what I had temporarily overlooked, what average earnings were for the 7 millions of bonds of Ann Arbor, and after that I felt I could not use 4.5 per cent. on this road. My impression was, that the Ann Arbor R. R. was a property along with the Grand Rapids & Indiana and Pere Marquette, and for that reason I first took 4.5 and 6 per cent.

I had looked at Ann Arbor quotations before determining 4.5 per cent. I overlooked some, and on review found I had not taken the rate quotations indicated.

On Minneapolis, St. Paul and Sault Ste. Marie, I permitted the rate taken to be modified by a very low ratio of operating expenses. When I first considered it as operating at 49.5 per cent., I used 5 and 8 per cent., afterwards raised percentage to 60. This line is allied with the Canadian Pacific, and takes the latter's methods of keeping accounts. I reached the conclusion that actual operating expenses must be greater than reported, and reduced rate capitalization to 4 and 6 per cent., especially in view of the reports of amounts carried to surplus, which if the usual method of charging operating expenses had been used, would probably be put into operating expenses.

I judge of the method of bookkeeping and handling of accounts of the Minneapolis, St. Paul & Sault Ste. Marie line, from what I know of the difference of English and American systems of accounts and the supposition is borne out by an examination of the reports. The difference in operating expenses between this and other lines, is due partly to the character of traffic. I had before me, in fixing the first rate used on the Minneapolis, St. Paul & Sault Ste. Marie,

stock and bond quotations, and 5 per cent. fairly represented the average market price.

In adopting the first rate, I determined the net return to the investor, and adopted that as the rate, but (referring to testimony given when before on stand), I would not claim that quotations of particular securities should be final. In determining the Michigan Central rates, quotations on bonds of other properties, similarly situated were taken. That has been the method with other properties, and I did not rest my determination of the rate for this particular road entirely on quotations for this road, but for this class.

I don't remember any extended computations where, all securities of a road being considered, the rate is as high as 5 per cent.

Judged exclusively on market quotations, there were no railroads making up a class, to which the Minneapolis, St. Paul, & Sault Ste. Marie line should be assigned, when the rate of 5 per cent. for annuity on physical property was adopted. The final determination of the rate was not based on market quotations alone, *e. g.* Michigan Central rate as determined by quotations, was less than 3.5 per cent.—I took 3.5 per cent. I compared the Minneapolis, St. Paul & Sault Ste. Marie line with the Duluth, South Shore & Atlantic and Pere Marquette, though it is not entirely comparable with them.

825 I would class that property with the Pere Marquette, Duluth, South Shore & Atlantic and Grand Trunk Western, though I made modifications as I observed differences in property. I have endeavored to adopt rates of annuity and capitalization, which I considered a fair return on investments of these classes.

826 THOMAS L. GREENE, sworn as a witness for defendant.

Direct examination by Mr. TOWNSEND:

I reside in New York city. I am vice president and manager (since 1887) of the Audit Company of New York, an examining and investigating corporation which makes comparisons and reports on business situation, financial standing, assets and earnings of companies and individuals. I was previously an officer of the Manhattan Trust Co. of New York; editorial writer on financial and business subjects for the New York Evening Post for six years; was engaged for two years in preparation of statistics for the Northern Pacific; two years as secretary of the association of anthracite coal mining operators. I have for many years written for papers and periodicals on these subjects. I am the author of the well known work: "Corporation Finance" (1897, Putnam) "relates to all the theory and practice of financing corporations, the different kinds of bonds and stocks, and methods of arriving at assets and earnings on which such financing could be based." The information in the book all obtained from first sources. I was brought up in the railroad business; was district agent of the West Shore railroad. I

have been employed in many cases in negotiations with railroads regarding questions of rate classification. I have been connected with investigations of the various questions concerning and for different railroads; for example, the Sandusky, Mansfield & Newark (now part of the Baltimore & Ohio) when the Baltimore & Ohio wished to absorb that road, was reported as showing a deficit under fixed charges. The bondholder's protective committee employed me to investigate and I found that a proper system of book-keeping would turn the deficit into a surplus. I have had occasion to examine into plans of organization of several railroad companies.

I have had considerable experience in judging of and investigating intangible values, principally for industrial corporations.

In my investigation of the Sandusky, Mansfield & Newark, (part of the Baltimore & Ohio) the reason was to show the relation between the branch and main line to determine the proportion of total earnings and expenses properly to be credited to the branch.

From my experience and investigations, it is proper, in my opinion, to allow branch roads constructive mileage, *i. e.* a larger proportion to the branch.

It is the custom of all railroads where the fairness of branch line earnings is a question, to allow the branch (or independent line) more than its mileage proportion, *e. g.* on the Sandusky, Mansfield & Newark (distance Newark to Mt. Vernon, 25 miles,) previous to our investigation, on all freight hauled to or from East, if hauled on main line 1,000 miles, (total distance 1,025 miles) The Sandusky, Mansfield & Newark was allowed 25/1025 of earnings. We reported a constructive mileage of 50 instead of 25 miles. For Mansfield, (66 miles from Newark) we reported they be allowed 150 instead of 66 miles.

This question has been investigated by congressional and legislative committees which, in reports, have approved system of constructive mileage—to branch lines.

A. In 1887 Congress appointed a Pacific Railway committee—

Mr. BLAIR (interrupting). It appears that he is not reading from the book.

Mr. BUTTERFIELD: He has closed the book since the objection was made.

Q. (continuing.) Who were asked to investigate the whole question of the Union Pacific railway in its relation to the Government as a creditor. Among other subjects treated in that report is the method of taking from the main line of the Union Pacific earnings and giving them to the branches under a constructive mileage system of accounting. The committee reported that the advantage to the main line of the increased traffic and the long haul was such that it was none too much for the main line to pay to the branch lines for gathering that traffic which the main line could handle thereafter so economically.

About the year 1885, the Illinois legislature appointed a com-

mittee to investigate the practice of the Illinois Central railroad in allowing constructive mileage to the branches of that road, with a view to ascertaining whether the State of Illinois was injured thereby because the State was entitled to 7 per cent. of the gross earnings of the Illinois Central railroad.

The question was whether the State was deprived of a certain amount of tax money under that system, and the committee reported that the system was just and proper and that the revenues of the main line were increased instead of decreased by that policy.

Mr. POND: I move to strike out what the witness has said in answer to the last and the immediate previous question, and especially to that portion of this answer which gives the details of the work done by the witness in these various things, mentioning the result of the report which they made, or which he made, on the ground that it was incompetent and irrelevant.

Mr. ANGELL: And I should like to add further to his statement of what appeared by reports of congressional and Illinois legislative committees.

Q. Did you investigate those cases yourself?

A. Only the public documents.

829 Q. Did those reports any of them contain statements of evidence in the cases taken before the committee?

A. My impression is they did, but I would not be positive about it.

From my business experience I can say that the application of constructive mileage to the earnings and expenses between branch and main lines is certainly proper.

I have had occasion to examine into the plans of re-organization of railway companies. The question, on re-organization, of the treatment of bonds of branch lines depends to an extent on the fairness with which earnings of those branches had been stated.

All items of general expenses should not be apportioned in same way, *e. g.* in case mentioned (the Sandusky, Mansfield & Newark railroad) we found the expenses of the soliciting and advertising department of the Baltimore & Ohio, were pro rated over this road—only a small portion could properly be charged to the branch. This is a general principle. The same is true on this and other roads, of unusual expenses which do not concern the branch.

There exists in corporate properties (railroads particularly) an intangible value, recognized as important, attached to general corporate value.

The real property values of the company should be taken and the differences between returns on that and the railroad's general earnings would be intangible value. That is in strict accord with the plan of financing and re-organizing companies and borrowing money upon them.

830 The consensus of opinion is that an average of net earnings is fairer than those of the particular year in which the value is sought.

In my own opinion a series of years should be taken as there might be exceptional circumstances in one year making it unfair to the railroad.

Five years previous to 1902 would be fair average for ascertaining the intangible value of Michigan railroads. In the Pere Marquette (in existence 3 years prior to 1902) that period would be fair. There is ample precedent for taking less than five years, where there are strong reasons.

Do you want an illustration? The American Beet Sugar Company was formed on a statement of earnings for two years on the express ground that it was a new industry in this country and to go back for the earnings during the mere experimental period would not be a criterion of the earning capacity, and it was admitted by financial people that that was correct and only two years were taken.

The property of these concerns consists in real—tangible—property, and another class of property such as rights under patents, trade marks, contracts. When I have used word "property" I mean real—tangible—property, anything that can be handled.

It is perfectly possible to value a railroad's property by market quotations of stocks and bonds. As in other methods the circumstances must be taken into view and the plan used with judgment. It would be unfair to take into account cases where quotations are made for special purposes which have nothing to do with the actual value of the railroad as a whole. Northern Pacific, in May, 1902, sold at \$1,000.00, and it would be unfair to take that because it was a special circumstance.

831 A. I should say you ought to take an average. That question comes up in New York State under the provision of a statute which requires all trust companies and banking institutions to make a report as of the 31st of December including all stocks and securities which they own upon that day and it has happened that the quotations on the 31st of December were abnormal and it was provided by law—

Q. (Interrupting.) Could they be abnormally high?

A. I mean either too high or too low. It was provided by the legislature that a banking institution in New York could spread its quotations over a considerable time, that is the language of the statute, and the banking department construes that to mean six months, but certain counsel of the trust companies claim they would have a right if they chose to take an average for the whole preceding year.

Mr. POND: I move to strike out what the witness said in answer to the last question including the words "it was provided by the New York statutes" as incompetent and irrelevant.

A. (Continuing.) In my judgment it would not be necessary to consider stock quotations further than one year from the date of the levying of the tax.



The value does not depend on the number of shares sold, but on whether the quotations are normal. They might be normal for comparatively few shares, depending entirely on whether sales are genuine. The sales of Illinois Central which are not large, are taken to be the genuine opinion of investors on the value of the stock.

Witness identifies Commercial and Financial Chronicle and Poor's Manual as being recognized authoritative publications on quotations and statistics.

332 I am familiar with De Ghuee's bond values. It is a standard publication for ascertaining returns and present value of bonds at varying prices. I have made an investigation to ascertain the number of quotations necessary to determine the value of stocks and bonds, examining into sales and prices of shares of all railroads whose sales on the New York exchange in 1903 were over 1,000,000 shares (10 railroads). I have ascertained, for 1903, the number of shares sold, highest and lowest price quoted, dividend rate by company, return to shareholders on basis of lowest and highest points touched, price quotations on the same stocks, Jan. 30, 1904, and the approximate return to the shareholders thereon, based on the dividends of 1903.

The results, taking Jan. 30, 1904, as the price, (because about half way between highest and lowest in 1903) are—

Atchinson, common .....	5.7 per cent.
B. & O., common.....	4.7 per cent.
Canadian Pac.....	4.2 per cent.
C. M. & St. P., common.....	5.0 per cent.
Erie, 1st pref.....	5.0 per cent.
Louisville & Nashville.....	4.7 per cent.
Mo. Pac.....	5.3 per cent.
N. Y. C. & H. R. R.....	4.2 per cent.
Penn.....	5.0 per cent.
Union Pac.....	5.0 per cent.

For purpose of illustration I have added four companies whose shares sold were less than a million—

Ill. Cent.....	4.5 per cent.
C. & N. W.....	4.2 per cent.

To these I added, to complete the table, but not as a fair basis of comparison—

Lake Shore.....	2.5 per cent.
Mich. Cent.....	2.3 per cent.

My conclusion is that in roads of the class of these companies, shareholders are willing to receive rates, varying with money market, from 4 to 4½ per cent.

I did not consider the results for the Michigan Central and Lake Shore a fair indication of what investors are willing to receive on such securities. I think them too low. The amounts 4 and not more than 4½ per cent. should be used. In general, return to investors will not be more than that, and they are willing to accept it on the amount invested.

The 4 or 4½ per cent. would be the value of intangible property to the capitalists. I think Prof. Adams' rate too high. My figures would increase the property's taxable value.

The year 1903 saw in New York a money panic in which values fell to a greater extent than for many years before. I have put an extreme low and high price for 1903 in every case on my table. We might go back many years before we could find prices approaching the low prices of 1903. I have put this into a complete table, not with the idea that it is an average which the investor is willing to receive. I have taken an average between high and low as the fairest way, being the price quoted Jan. 30, 1904, when the stock exchange had recovered from the low prices of extreme money stringency.

The average of January 30, 1904, was below the average for 1902 and below the highest for 1903. It was proper in 1902 to capitalize at 4 or 4½ per cent. to determine the value of non-physical property. I think 4 per cent. nearer right.

In arriving at the total value of stocks and bonds we use market value always. When we speak of a return to investors, we mean upon the amount the investor pays for the bond or stock.

Special circumstances in regard to the minority stock outstanding on Michigan Central and Lake Shore make their quotations unreliable as a basis for estimation of what investors are willing to take.

Railroad debts are not all secured by bonds. Those not so secured may be called unfunded debt, though the term means money borrowed from banks and includes obligations owed, but not due, *e. g.*, material bought on 90 days.

834 Unfunded liabilities are often of considerable importance.

Cautious investors always look to the amount of a corporation's floating or unfunded indebtedness. Current liabilities take preference of stock, but usually come after bonds.

In some cases current liabilities have market value, though usually it is a question between the banker and the corporation.

The current liabilities of the Michigan Central in 1902 were worth par. I assume those of the Pere Marquette were worth par.

I think the plan of valuation of Prof. Adams is correct. It follows the best practice in financing companies in New York city.

I think, as a matter of fairness, that a single year ought not to be used, but, if used, do not consider it to be an "income tax."

Industries served do not contribute to a railroad's value in the sense that they become a part of its assets. The prosperity of all business works together for the good of all industries,—one is not an asset of — other.

One has enhanced value by reason of the other. A railroad is dependent upon the activities of people in the territory served, and they are dependent upon the railroad for transportation.

Railroad corporations to a large extent encourage and contribute to the creation of corporations and industries along their rights-of-way; many industrial departments to induce manufacturers to settle along their lines; the companies are interested in the success of these enterprises.

There should be a different rate of capitalization for railroad, street railway and industrial properties,—they occupy different positions in character of organization privileges and business,—which is reflected in stock market quotations where shares are sold to a sufficient degree to indicate public opinion, and the custom among banking houses who handle propositions is to differentiate in those cases.

Prof. Adams' statement to the effect, that profits of industrial business are temporary and that the forces of competition eventually reduced them to a normal amount (in that respect being different from the railroad company), is true. I can give you as an illustration a company with whose re-organization I was connected, namely the American Bicycle Company. That corporation was formed in 1898 and 1899 and took over all the factories which manufactured bicycles; they were at that time at the height of their prosperity, and the statements on which the company was capitalized showed profits varying from three to four millions, I think the smallest was three millions of dollars. I had occasion in the re-organization of the company a year ago to look into the matter and found their profits after the formation of the company had been \$800,000. There is a case where owing to the fad of the use of the bicycle large profits were made until it gradually sank to the position of a normal manufacturing business, which it is now. If the Michigan Central had been making the same earnings in 1898 that the American Bicycle Company made, allowing for the difference in the general prosperity of the times, they would probably *had* been earning approximately the same thing now instead of falling in the way the American Bicycle Company did. The same is true of many other instances.

### 836 Cross-examination by Mr. POND:

Intangible property is the earning capacity of a company outside of the return on and not including its assets. Tangible property consists of land, buildings, machinery, materials, supplies, manufactured products, etc.,—any value beyond these and a normal return upon them is intangible property. A proper return on Michigan Central intangible property is 4 and not exceeding 4½ per cent.

On this theory of intangible value there is no limit to the money the Michigan Central could receive and dispose of in payment of interest on indebtedness and dividends to stockholders. The valua-

tion is simply for taxation purposes, and does not affect the earnings of the road. I never knew this theory to be applied in valuing property for taxation.

Every theory of valuation, including the stock and bond method, should be applied with judgment. That theory is to be applied with modifying circumstances in view.

Net earnings can be literally and solely capitalized and the result acted upon, if judgment is used in the statement of net earnings and method of capitalization. I think capitalization of net earnings ought to spread over the earnings of five years. In this case I would not take into consideration the future. I think the five years in question would be fair to railroads as including two or three years where earnings — low.

If called upon to make a valuation for purpose of taxation, and included the year when No. Pac. went to \$1,000, I would not  
837 take into consideration the stock selling for \$1,000. It would be unfair to capitalize the net earnings for prices quoted on Michigan Central stock. The capacity to earn is less variable, in railroads, than in some businesses.

I agree that intangible attaches to tangible property. I say attach, because of railroads having the same amount of physical property, some do not have earnings to create the intangible. The different classes of property are treated as separate entities in financial circles.

In some cases of re-organization, the intangible property is put above value of the common stock issued to represent it, and for this reason large corporations have failed.

With judgment, it is possible in every case to arrive at a value of intangible property that will not over-estimate. In capitalization, intangible property is not called water, but may prove to be such, when the intangible property is over-estimated.

In the case referred to where 6 per cent. was paid on preferred and 6 per cent. on common stock for 5 years, the methods are shown to be conservative. In that case the mortgage covered the physical property only. If it had been foreclosed and the physical property sold, the non-physical would have found nothing to attach to—that is in case of a stop-age. If the Michigan Central stops running there would be no intangible value. Investors in Michigan Central stocks and bonds are willing to take about  $3\frac{1}{2}$  per cent.

According to quotation figures, stockholders would be willing to take 3 per cent. and less. I do not consider this a fair statement of the position of Michigan Central stockholders. The Michigan Central pays 4 per cent. on par, to stockholders, but the stock is sold at 130 and returns a trifle over 3 per cent. The low dividend bonds  
838 are usually sold to bankers. Purchasers would not be willing to hold these bonds if after paying taxes they only got 2 per cent. I don't know of any taxes they pay. There is a nominal tax in New York, but they don't pay it. I don't think  $1\frac{1}{2}$  per cent. a reasonable profit or income. Practically more is received

because taxation is escaped. The great mass of railroad bonds are held by charitable institutions paying no taxes. The investor is satisfied with  $3\frac{1}{2}$  per cent.,—generally they are willing to receive  $3\frac{1}{2}$  per cent. return on bonds without reference to taxes. The individuals do not figure the taxes.

I first heard of Prof. Adams' method of arriving at non-physical property from him two years ago and am very familiar with the theory in other matters. The non-physical elements of a railroad are the earning capacities outside of an absolute allowance for earnings of physical property.

Everything going into the question of earnings produces the intangible value. In one concern it is stated, "contracts, leases, trademarks, patents, processes, brands and kindred assets of an established business."

Prosperity is an element of non-physical value. A particular concern may be very prosperous under special circumstances, when its neighbors are not.

The non-physical property is not a myth, because it cannot always be accurately described in every detail. We see its effect. It cannot be said what proportion of non-physical property is due to a particular element. The tax upon it comes into existence, increases, decreases, and disappears with income.

Q. Why then isn't this tax to the extent that it is based upon non-physical property, in the nature of an income tax?

A. In the legal sense undoubtedly you mean by the question. I should say not. In an economic sense, the tax may be said to proceed after a fashion to be paid from income.

Q. What do you mean by saying, in a legal sense?

A. I mean in a specific sense.

Q. Suppose the law in this case especially authorized this method of getting at the property and levying the tax, it would still be in the nature of an income tax?

A. Economically speaking, yes sir.

Q. I mean under the law it would be in the nature of an income tax?

A. So far as I am able to judge of a legal subject, I should say not.

Q. Why not?

A. Because I think that it isn't, such as my understanding of the law is, but I am not a lawyer.

Q. The effect is exactly as if the tax was put upon the income?

A. To a certain extent. Any other tax is the same way. A tax on a house has to be paid by the owner from what he gets out of the house or some other source of income.

Q. The tax is levied in this case on account of income and not on account of value of physical property?

840 A. To the same extent that all taxes are; so I take it that all taxation in the long run is paid out of income.

Q. There is a difference between a tax that is an income tax that rests fully on the income and another kind of a tax?

A. Yes, sir.

Q. This tax, so far as it refers to non-physical property, you have already conceded, I think, is based upon income solely?

A. The value of the property—in valuing the property the income is taken into account, but it is not a tax on income in a legal sense, as I understand it; it is in an economic sense.

It is practicable to apply Adam's system to street railways or industrial companies.

Commercial forces do not diffuse earnings of railroads to the same extent as industrials, and they are not subject to competitive forces in the same degree as industrial earnings. This is taken into consideration by the investor (dealing in stocks of industrial companies) who demands a larger return than he does from a railroad.

So far as the plan is concerned it is just as practicable to include industrials as railroads in a system of this kind. If all were under the same system it would bring the different companies under the rule of the opinion of the community as to their merits, because their intangible property would be affected by opinions of investors as to income's permanency.

By Mr. BUTTERFIELD :

One reason Prof. Adams' system could not be applied to property of ordinary manufacturing company when it could to railroads is that commercial forces tend to diffuse the surplus earnings of manufacturing companies, but not those of railroad companies. The railroads are a class by themselves, by reason of the monopolistic elements in their business.

841 Competition, paralleling of railroads by electric lines; and, to a certain extent, the regulation of rates by law, the power to determine protection at crossings and highways, laws providing the number of men in charge of a train, are things which tend to diffuse the surplus earnings of a railroad company. I don't think they are as material as in a grocery store,—it is a question of degree. I first heard of Adams' system in detail in 1900 or 1901. The principles are the same as those described by Prof. Adams on the witness stand here.

The difference I think of is in allowance for taxes. In his first plan there was an arbitrary allowance for the effect of present taxes on future earnings.

Prof. Adams' computation in 1900 made allowance for increase of taxes. I disagreed with him in that, and still think the effect of increased taxes ought to be on the succeeding year, not 1902. In his present system he allows for taxes on a 5 year average, but does not deduct from net earnings sufficient to pay the taxes of the year in which the appraisal is made.

I can't describe Adams' system of 1901 in detail. In 1901 the item of operating expenses included taxes.

In the present system, from corporate surplus for (Michigan Central), after deducting operating expenses after taxes paid, he deducts  $3\frac{1}{2}$  per cent. of the physical value and capitalizes the remainder at 5 per cent.; the physical and non-physical added give him the road's value. In 1904 no allowance is made for taxes resulting from the appraisal. Taxes were allowed for in year in which they were paid, not for the year in which they were laid. The value of the property was determined by reference to net income for the year laid. It is not customary in other cases to deduct taxes in the year in which laid.

I suppose in a general way the tax commissioners are  
842 guided by the tax paid the previous year, but don't think the direct amount is taken into consideration. I don't know of any case where tax to be levied on a railroad company in a given year is determined to any degree by taxes paid the previous year. In a sense, in Adams' system, taxes for 5 years previous have an effect upon taxes to be paid in a given year.

"Q. And if the taxes were more than actually were paid before, the taxes this year would be less by reason of that?

A. Certainly they would.

Q. Then isn't it fair in the application of a rule of this kind to allow the corporation, the extent of whose tax is to be determined by the taxes that have already been paid, to have sufficient of its revenue set aside to pay the taxes which are enforced by the application of that rule?

A. My general thought would be that it would follow the customs of the country, that that tax payable the next year should then be taken from the earnings of the company for that year in applying the tax.

Q. What do you mean by the custom of the country?

A. I mean that it is the custom of the railroads and the States throughout the country to levy the tax in one year and for the railroads to pay it the next.

Q. What has that to do with the question?

A. It has this; in this instance, if the taxes were levied in 1902 and paid in 1903, the amount of taxes so paid would have an immediate effect upon the earnings of the company for the year 1903, which we have not yet arrived at.

Q. But you say you know of no case in the custom of the country where the amount of the taxes to be paid is radically different, and isn't it fair before you capitalize the net corporate surplus for the purpose of determining how much the tax shall be in this year to permit the corporation to set aside money enough to pay the taxes which will be imposed by the application of that rule?

843 A. It is contrary to all my railroad experience.

Q. You never had any experience with such a case?

A. No, sir, but I have had railroad experience with taxes.

Q. But not with the application of any rule wherein the tax paid in a given year was directly influenced by the amount of taxes paid



in a previous year. So it don't make any difference whether you compute the taxes the previous year or the succeeding year, the taxes depend upon some other element. In this case, how can you say that this case is to be judged by any custom of the country which does not exist?

A. I don't consider that that is quite so. I should state the case a little differently. I should say that this was a method of arriving at the earnings of a company, and that the earnings of a company are to be determined by the actual amount of taxes paid in that particular year. I might say in one or two cases we have had that question up with some railroad company. I have in my office, on file, the statement of the railroad companies that the tax levied in one year was to be considered only as applying to the year in which they are paid, and not the year in which they are levied.

Q. That has no reference to the determination of the tax to be paid in the future, in any statement that you have ever heard of that kind?

A. Certainly not."

I don't think it business-like to deduct before capitalization the additional taxes the enforcement of the rule produces.

I am familiar with Union Traction Company, of Chicago. There are many reasons why every consideration should be allowed to the Union Traction Co. in the matter of capitalization. I take it that Judge Grosscup was influenced in the deduction taxes before capitalization partly by the situation of the company. I don't think it would be a fair rule to apply to the Michigan Central's property. The tax levied by Adams' rule of valuation is an income tax in an economic but not in a legal sense. By legal sense I mean an absolute tax on income. A tax determined wholly by income would be an income tax.

For every dollar of net corporate surplus discovered \$20 of non-physical value. If tax rate \$16.91 per thousand, for every \$20 of valuation company must pay 33 cents, or 33 cents on every dollar of net corporate surplus found in the method pointed out.

I don't think to that extent it is an income tax. The rule separates valuation into two items, physical and non-physical. The two are added and taxed, through the property. It is not an income tax, because it is arrived at through a property value. The value of other property is determined in the long run by income.

The tax on this hotel comes out of income, but that don't mean precisely that it can be determined by reference to net corporate income.

The non-physical elements of one combination are given as "good-will, contracts, leases, trade marks, patents, processes, brands and kindred assets of an established business." There are other elements of good-will. Referring to Harper Pub. Co. I said if the mortgage on physical property was foreclosed the non-physical would disappear. Those elements enumerated would not be worth anything unless gathered together and used as the organization of a going concern.

A man could own a patent or secret process who did not own any physical property, and transfer those without reference to physical property. The elements read could exist independent of organization. The brands would be worthless unless a going concern had possession.

845 The individual brands could be transferred, but the common stock of the concern would be worthless. It depends on the organization of a going concern.

The elements from the document would not disappear on foreclosure of the physical property, but would become practically worthless. There are elements of non-physical value different from those referred to. Every business has its peculiarity.

Elements of non-physical value consist of those read and all other matters not physical which affect the corporation's earnings, *e. g.*, reputation, perfection of organization. The elements read do and do not attach to physical property. They can be sold, but their value, if sold to different people, would be largely dissipated. The perfection of organization and reputation attach to a concern as a going concern, and to physical property.

These would pass on a reorganization that was friendly, *e. g.*, if the physical property passed to a stranger they would not pass with it, but they are dependent on it.

The items, perfection of organization, reputation and fame due to advertising, could not be sold to an entirely different concern. Upon a transfer the three items could attach to other physical property, but would not. It is the experience of all business that where they are detached from the physical property they lose sometimes all, and always part of their value.

In the case of Harper Pub. Co., it would make no difference on the items mentioned what particular building or presses were used, or at what location operated. If some one by the name of Harper should purchase on mortgage foreclosure and move across the street these items would go with the stock. But they would not carry what we call "good-will." Non-physical value is based on a very large number of things.

(Witness illustrates the determination of intangible values in industrial corporations by references to specific cases.)

846 My experience with reference to valuation of railroad companies has not been wide except in re-organization. My experience of valuation of property for purpose of combination has been extended since 1897.

The  $3\frac{1}{2}$  per cent. annuity in the Adams plan is to distinguish between the part of property subject to bonds or preferred stock in case of other companies, and that which is at hazard. The bonds are debts, and the stockholders are partners. It is interest on the original investment. The bonds and preferred stock should represent the tangible property, and no more, in ordinary cases. It is not an invariable rule to allow two miles for one in case of constructive

mileage. Each case depends upon its own circumstances. It might be more or less than two for one, or might be an arbitrary.

Over-valuations in combinations are more common with reference to non-physical than physical elements. In Adams' theory it is assumed that the net earnings are all the product of the taxable property, tangible and intangible.

It is assumed that all these elements, including services of employees, go to make up the net earnings. As a whole it is true that the labor of the employee has contributed to the company's income beyond the sum paid for his services. I do not know any reason why this should be deducted before capitalization. Mr. Bowers' argument is based on the supposition that it is wrong to allow a profit on employees.

We are valuing the taxable property by reference to the money derived from it. The services of employees are part of the organization. A portion of the corporation's net income results from the fact that the employee yields more to its income than has been paid him for his work. This came either from the tangible or intangible property. A portion of the intangible property is found in the muscle of the engineer or brain of the manager.

847      FREDERICK J. LISMAN, sworn as a witness for defendant.

Direct examination by Mr. WYKES:

I reside in New York city. I am a banker and broker. I make a specialty of dealing in railroad bonds, particularly uncurrent, meaning those not actively dealt in—the smaller issues.

I am a specialist; in fact, the principal market and dealer in all smaller issues of railroad bonds. If anyone in New York or other place wants a quotation or to buy or sell any of those issues, as a rule, they come first to my firm.

I am a member of the stock exchange. The Commercial and Financial Chronicle is an authoritative financial newspaper, looked up to for all information on financial subjects, especially the statistical quotation department. I furnish quotations for railroad bonds not regularly dealt in. A large amount of trading in bonds goes through my office every year, approximately 20 to 75 millions. I am familiar with the bond issues of the Michigan Central and Pere Marquette,—know all the issues and their value.

De Ghuee's bond values is an interest table, universally used, and regarded as correct in bond circles, showing the rate of return of bonds having different periods of time to run and different prices paid.

Witness testifies to the value of Michigan Central stocks and bonds April 14, 1902, as shown by the following table and notes thereto.



848 The unit in trade is 10 bonds, unless a different amount is mentioned. Guaranteed bonds are not legal investment for savings banks in many States where a direct bond is, which makes a difference in the rate of return. By term "and interest" I mean with accrued interest from last coupon date added to amount given.

(Witness places value on bonds of Pere Marquette as of second Monday of April, 1902 as follows :

## Pere Marquette System.

Description of issue.	Rate.	Maturity.	Outstanding April, 1900.	Value as given by Lisman. <i>g</i>	Record page.
<i>h</i> Flint & Pere Marquette. ....	6%	1920	\$4,000,000	<i>a</i> 123.5	3880
Flint & Pere Marquette. ....	4%	1920	1,000,000	96	"
<i>h</i> Flint & Pere Marquette. ....	5%	1939	2,850,000	<i>a</i> 113	"
<i>h</i> Flint & Pere Marquette. .... (Port Huron Div.)	5%	1939	3,500,000	<i>a</i> 113.5	"
Flint & Pere Marquette. .... (Toledo Div.)	5%	1937	400,000	107.5	"
<i>h</i> Chicago & West Michigan. ....	5%	1921	5,758,600	<i>a</i> 109	3881
Chicago & West Michigan. .... (Coupon scrip.)	5%	<i>i</i>	56,510	par.	"
<i>h</i> Chicago & North Michigan. ....	5%	1931	1,667,000	<i>a</i> 109	"
<i>h</i> Detroit, Grand Rapids & Western. .	4%	1946	5,379,102	<i>a</i> par.	"
Grand Rapids Newaygo C. S. ....	7%	1905	19,000	<i>b</i> 107	"
Saginaw, Tuscola & Huron. ....	4%	1931	1,000,000	92.5	"
Pere Marquette. ....	5%	1951	3,200,000	<i>c</i> 90	"
P. M. Transportation Co. .... (Guaranteed P. M.)	6%	<i>j</i>	100,000	<i>d</i> par.	3882
Michigan Equipment Co. ....	6%	<i>k</i> 1902	157,000	par.	"
Western Equipment Co. ....	6%	1909	93,000	102.5	"
<i>e</i> Pere Marquette Equipment Co. ....	5%	1910	924,000	par.	"
Grand Rapids, Kalkaska & S. E. ....	5%	1927	200,000	102.5	"
Grand Rapids, Belding & Saginaw ..	5%	1921	<i>f</i> 260,000	102.5	"

*a* Sales on exchange.

*b* A 4.5% basis.

*c* Put out about April, 1902, supposed to be syndicated at 90 and interest, and offered at 95 and interest.

*d* A 6% basis, bonds secured on ships will not sell as readily as on railroad. (3882.)

*e* Drawable at par.

*f* So small an issue as never to command fair price.

*g* Interest to be added.

*h* Listed on Boston or New York stock exchange.

*i* Ten years from issue.

*j* \$20,000 annually.

*k* June 1.

I take a lower basis of return for Michigan Central than Pere Marquette, because the Michigan Central has better credit. The security and management is better, and permanency of property is greater.

For 1902 Michigan Central bonds sold on a 3.20 to 3.40% basis; the Pere Marquette is not as even.

Cross-examination by Mr. BUTTERFIELD:

The basis of return on Pere Marquette securities April 1902 was from 4 to 5%, varying in accordance with the particular security for a particular issue. The difference of basis on Michigan Central 3.20 to 3.40% is usually created by the premium; people do not discriminate between one security and the other, but the amount of premium of bond. On Pere Marquette they look to the security, fearing they may have to rely on it. The whole level of the bond market will not change as quickly as from month to month, and the rate of return depends upon the money market over a period of 3 to 6 months.

Where the rate of interest is high in New York, people insist on a little higher basis of return when they purchase railroad bonds, *e. g.* Michigan Central, 3½'s purchased by Morgan & Company for 104.5 and are now selling about 10 points lower; they are as good now as they were then; not today worth 1.04, unless you discriminate between "worth" and "value" and in our eyes a thing is not worth more than it brings in the market. The return to the investor at the figure at which it was purchased by Morgan & Co. (91.04) would be 3.35 per cent., at current price 3.75 per cent.

For Pere Marquette I computed different classes of bonds on different basis and on Michigan Central computed all direct bonds the same.

The market discriminates between guaranteed and direct bonds. In 1902 I computed direct bonds on from 3.30 to 3.40 per cent. basis, and guaranteed bonds—Battle Creek & Sturgis, 3's, on a trifle over 3.5 basis (long and therefore popular bond), while Joliet & Northern Indiana was computed on 4 per cent. basis (comparatively short bond).

Before determining the basis on which to compute different classes of bonds I must know the description, time to run, guaranty and nature of security; these must be considered in every case, being elements to fix price.

Before recommending a purchase of bonds, we would consider the question of management, derived from reports in general—general information from what we read and heard and sometimes on the ground. I don't think generally we come down to degree to which discipline is maintained among employees; we always study the extent of expenditure for maintenance of way and structures. A judgment as to value of security is influenced by finding expenditures for maintenance not up to what other roads are expending.



850 The Flint & Pere Marquette 6's, due 1902, \$4,000,000, which

I fixed at 123.5 listed on New York stock exchange and I based this figure on actual sales published in the Financial Chronicle or official list of the exchange. Wherever price is fixed on listed bonds I have based it on sales about that time.

I based the value of unlisted bonds mostly on comparison with similar issues of the same property, taking into consideration size of issue, rate per mile, etc. The Michigan Air Line is based on actual transaction. Its bonds are listed—the smaller issues of listed bonds are dealt in outside,—over the counter—more than in the stock exchange; we have had transactions in those. On bonds where there are no transactions, I based valuation of what they would bring without reference to actual transactions. It is my judgment of what they would be worth if sold, based on transactions, in those bonds, at different times; not at that time, but recent transactions in many of these bonds at various times. I have dealt in Kalamazoo & South Haven, Battle Creek & Sturgis, Joliet & Northern Indiana before, and possibly since that date, the price at which I dealt in Joliet & Northern Indiana was rather higher, because then they had longer to run.

On Battle Creek & Sturgis 3 per cents it was in neighborhood of .85. On unlisted bonds other than the 3 spoken of, I have simply given my opinion as an expert of what those bonds would be worth, based on such information as I have. In fixing the value of a similar road in California, I would be able to refer to something in my office that would be a guide; though I could not ascertain from it whether the road were well managed. The element of management then would not enter into it. I would not act without investigation of that subject. The uncertainty of management would be an element of the price. I would refresh my memory by looking it up in Poor's Manual or the Chronicle, and not knowing about the management would bid a low price, assuming management was bad.

The basis upon which various securities are computed, is determined by the rate of interest for money throughout the section of country where they buy bonds, meaning that Michigan

851 Central bonds are what we call legal, i. e. legal investment for saving banks. It depends on the rate of interest banks are satisfied with about that time, and that depends on the price at which they can buy other bonds that are "legal:" city bonds, money loaned on real estate. The basis involves all elements that make up rate of interest.

Rate of interest varies materially between cities; that does not affect price of bonds from day to day. The New York law names roads in whose bonds savings banks may invest; in Connecticut, the law is broader; in New York I think the act includes direct obligations of the Michigan Central.

Pere Marquette bonds are not "legal" for anything and have to take their chances on the open market, on the general repute in which the road stands.



I deal in guaranteed stocks of these roads. The guaranty of the Michigan Central or any Vanderbilt road sold in April 1902 on a 3.75 basis; in New York all stocks representing equities, are free of taxes and all bonds are taxable (except those held by banks); as a rule bonds very seldom pay taxes.

A person could afford to invest in bonds on a basis of 3.5 and pay taxes. In New York, taxation is 1.60 on personalty, the same as realty; in Maryland, on personalty .30; Pennsylvania, .40; Connecticut, .40. This variation makes a difference in the price of securities. An element of price is the popularity of a particular security in a particular State and we have in mind being able to sell in a State where popular. My *under* understanding is that the law means that only direct obligations are legal for savings banks. On Michigan Central, guaranties figured roughly on 3.75 basis.

If the Jackson, Lansing & Saginaw was not a guaranteed stock, I would compute value on a different basis of return, considering elements of what dividend it pays, how much more than dividend does it earn, how safe a return to purchaser, how permanent its business, is it likely to be paralleled and a thousand and one conditions.

852 Mr. WYKES: We object to all questions in regard to bonds and guaranteed stocks, and move to strike out all reference to the act.

If the branches of the Michigan Central had stock of their own not guaranteed by the Michigan Central and dividends were paid out of earnings, the basis of computing prices would depend on a greater variety of conditions and might vary on different branches. If the same rate of dividend was guaranteed they would sell at practically the same prices; I would consider each road separately, to reach a determination as to basis of return. Any 6 per cent. stock with 999 your lease would sell at the same price. Market quotations might fluctuate half a per cent., but the stocks would average, over a series of years about the same price.

Under objection of incompetent, immaterial and improper cross examination.

In computing on an independent road like the Manistee & Northwestern, I would have to figure on permanency of business, management and future as to whether likely to be independent or bought up; on this I would compute bonds at a lower rate than stock. There were actual transactions in Detroit & Mackinac—the first lien sells to pay a little over 4 per cent., the next, to pay 4.5 per cent.; I don't think preferred stock was paying any dividend, but was selling in the neighborhood of 70 with expectation of 5 per cent. dividend.

Assuming the dividend paid, that would be about 6.5 per cent. I computed Northwestern bonds in Michigan on the same basis as Michigan Central; its stock is dealt in on the stock exchange; consensus of opinion does the quoting here.

## Redirect examination :

Regardless of the amount of dividends on each branch the sale at varying prices would bring the investor the same return approximately, as equalization and adjustment takes place in the premium.

A 10 per cent. stock would not sell to pay the investor quite  
853 as good a return as a 4 per cent. stock. In April 1902, the market was fairly broad, and bonds could have been sold in greater volume and amounts at that time, depending on how judiciously offered.

Q. For Michigan Central as of second Monday of April, 1902, you have fixed the return as between 3.20 and 3.40. Can you give the average for the year beginning 6 months before and ending 6 months after that time?

Mr. BUTTERFIELD: That is objected to as incompetent and irrelevant.

A. The fluctuation was not wide, it was approximately the same, the market was steady and the return the same for some time, but the bond market commenced to go off in April 1902 and has been going off since. April was the average of the first 6 months; the second 6 months was lower—by 1 per cent.

For the fiscal year ending with August first figures would be about the same as the figures fixed. At the beginning of the fiscal year, prices may have been a trifle higher and at the end a trifle lower. It would average about the same on the Michigan Central. I would have fixed approximately the same basis of return for the Pere Marquette during that period, and also on the general market on all bonds, *i. e.* bonds held steady until summer of 1902.

A management known to be conservative and good, would influence me in fixing the basis of return, as would the management of the Michigan Central—as far as Michigan Central is concerned, it has such strong credit and high standing that it is accepted as A-1 in every respect.

## Recross-examination :

The return insisted upon for 6 months prior to April would be about the same as that given; for 6 months afterwards it was higher. I am taking prices at which various listed issues sold. I can give  
854 you the particular basis for each bond by figuring on the prices. A Grand River Valley bond at a premium having comparatively a short time to run, is not as desirable as a longer bond, and therefore will sell at price to pay higher return, than the 3.5's would.

"Q. Now suppose you were to understand that it has been said in the testimony in this case that the Michigan Central Railroad Company, for example, is entitled to receive a return upon its entire physical property valued upon an inventory made by an engineer

which involves a consideration of the cost of reproduction of the railroad as a whole, every inch of it in its present condition, depreciated to some extent in different parts of it, and you were called upon to give an opinion as an expert dealer in securities as to what rate of interest the company was entitled to receive upon its physical property, would you say that investors in the securities—in all the securities of the company, would be contented with  $3\frac{1}{2}$  per cent. upon the value of the physical property as a return on the investment?

"Mr. WYKES: I object to the question as incompetent and as improper cross examination, being a matter not referred to in any way whatever in the direct."

A. Certainly not.

"Q. Then would you say that the rate of interest which investors in bonds of the classes you have described are contented with was a criterion of the rate which the company would be entitled to receive upon an investment in the physical property of the Michigan Central, as I have described it?"

"Mr. WYKES: I object to the question as incompetent and as improper cross examination, being a matter not referred to in any way whatever in the direct".

"A. No, sir. I certainly should think the company ought to get more.

#### Redirect examination:

"Now the last few questions that Mr. Butterfield asked you, were your answers to those question predicated upon present conditions of the Michigan Central Railroad Company or upon a supposed case?"

A. I think I told Mr. Butterfield in answer to what interest they ought to get, etc. if the Michigan Central was not built that it was so largely hypothetical, it would be difficult to answer; but when he asked my opinion whether the company ought to be satisfied on its investment with a smaller return as some of the security holders or bond holders who are really artificially restrained are, I said I most emphatically thought they ought to get a better return. \* \* \*

Q. For instance, we will suppose that they do actually receive in money 4 per cent. or actually receive in money the same rate that has been spoken of here today and in addition they received something that goes into betterments of the property, now you don't mean to say they are entitled to 4 per cent. or more in addition to what goes into the property?

A. Well I didn't understand the question in that way at all. I understood what rate of interest would they get, what per cent. upon their investment.

Q. You answered without regard to any investigation of what portion of the earnings goes into betterments and what not.

A. Yes sir. The only thing that I regarded was the rate of interest with which Mr. Butterfield compared it, which I understood was the rate of interest at which the bonds were sold."

"Mr. WYKES: I move to strike out all the answers relating to the rate of return to which the stockholders or owners of the road are entitled on the ground that the questions were not predicated upon the actual conditions, and also on the grounds mentioned in the objections made to the questions during the examination."

856 CLARENCE H. WILDES, sworn as a witness for defendant.

Direct examination by Mr. WYKES:

I am 48 years old. I reside in New York city. I have been for 25 years a banker and broker in investments and securities, negotiating, buying and selling securities for individuals, estates and corporations. I am familiar with the securities of many railroads, including the Michigan Central Railroad Company.

I have dealt in those securities, purchasing Michigan Central stock in 1901 and '02. I can give the price approximately. I started as low as 120—117 in 1901 and continued to buy through 1903 up as high as 160. The average price paid was about \$145 a share. (Witness produces stock exchange record.)

In 100 share lots, the lowest in 1902 was 150, the highest 192. In 1901, the lowest 107.25, highest 180.

"Q. How many shares of the stock do you control at the present time?

A. Well, there is a distinction there. Somebody said we had a pool on the Michigan Central stock. That is not so; there is no pool to it. A pool implies speculation on the stock, and we have no stock for sale, and we do not propose to sell any; we simply bought for investment absolutely. I control just exactly my interest, which is with J. & W. Seligman Company, and that is all I control, and I have recommended the purchase of this stock to a great many people to the extent of over 3000 shares. That is all."

3000 shares and over were purchased on my recommendation. During 1902 the stock was bought at average of \$145 on my recommendation absolutely for purpose of investment. I considered the stock worth more than market price at that time.

"Q. What did you consider it worth in 1902, say in April?

A. On the basis of their reports and their present bonds and the amount which would come to the company from the premium secured on the sale of those bonds, I figured that the reduction  
857 in interest, and increase in the earnings as shown me by Mr. Cox, the treasurer of the road, would certainly enhance the value of the stock to a price commensurate with that of other roads

at that time, and the answer that I would make is that the stock would be worth at least \$200 a share.

Q. You are speaking of 1902?

A. I am.

Q. Now, those sales, or rather the purchase of which you speak, were *bona fide* purchases, not for the purpose of getting control?

A. Not at all.

Q. Nothing of that character?

A. No, sir. May I interject something there? I wish to state that any idea arising that I am seeking an ulterior motive for advancing the price of this stock, or in any way influencing the Michigan Central road to purchase stock from me, is absolutely an erroneous one, and any statement that there is any pool formed in the stock for exchange purposes is absolutely false. This last stock which I sold, some 1800 shares, was for absolute investment; it doesn't make any difference whether the market is at par or not; it will go to posterity, and the people interested in the stock are friends of Mr. Ledyard and in no way, shape or form do they wish to have him interfered with; they are interested in the development of that property through his capabilities. Mr Ledyard understands the value of the property as well as I do. He told me what the property was worth when I was in Detroit before refunding, and I do not care to say what he told me, but it led me to send a telegram here, basing the purchase made at that time upon it."

DeGhuee's Bond Values is recognized for determining the value of bonds on the basis of maturity, dates and rate of interest.  
858 The Commercial and Financial Chronicle is the recognized authority on quotations of stocks and bond values. I think I was in Detroit and saw Mr. Ledyard in December, 1901.

#### Cross-examination by Mr. BUTTERFIELD:

I first purchased Michigan Central stock in 1901, around 120 or 121. It was bought for J. & W. Selligman Company, and I had an interest; the firm still holds 890 shares, in which I have one-tenth interest.

"Q. Do you know what purpose J. & W. Selligman had in purchasing it?

A. It was just simply as they would buy anything else; it was in view of the refunding, and the increase in earnings, would enhance the value of the stock.

Q. It was a speculation?

A. No, sir; not necessarily a speculation.

Q. Wasn't it expected that the value of the stock was increased by the refunding and the reducing the fixed charges, and an increased earnings, and that there would be an increased sale for it?

A. It was absolutely a sale, yes, sir.

Q. If the market raised they expected to sell?

A. They might have. You wouldn't buy anything if you expected a loss."

J. & W. Selligman are bankers. At the time it was rather questioned, whether stock was purchased by them for purpose of permanent investment. We had a bid of 165 for our shares (about 2000), and declined it. Mr. Isaac Selligman suggested that the stock be divided among the partners, to hold for investment. It was not done; I objected. We preferred keeping the stock to taking 165. I was not a partner but simply had my interest. Some of it sold at a loss. Some was sold at about 165. Up to 3 weeks ago, we had

1,601 shares left, for which we had paid as high as 159, and  
859 an average of 145. Last week I sold 600 shares at 132 or 133.

(Under objection of improper cross-examination.) I would advise customers to buy Michigan Central bonds at 3.75 per cent. basis. There is a market in New York, for securities considered sure to pay 3.75 per cent. There is no tax upon stock under the New York laws. The tax on bonds would be paid by the investor; the personal property rate in New York is about 1.46 per cent. on par.

Bonds are assessed at full market value; that would reduce the net return to holders to almost nothing. Of course they have offsets. No person could afford to invest in Michigan Central bonds at 4 per cent., if he expected to pay what the law imposed as a tax.

Holders of coupon bonds do not expect to pay the tax,—registered bonds are sold at 1.5 per cent. less than coupon bonds, because they can find out the owner. Investors buy Michigan Central, Lake Shore, or stock of that character, because there is no limit to the dividends they can pay, whereas, the interest on the bond is fixed.

"Q. If they were sure that there would be no increase in the dividend, and there was no element of speculation in it whatever, would they be willing to accept the same net return on the investment in stocks as on bonds?"

A. I should answer your question by waiting until we got to that bridge and see whether we are going to cross it or not. No man has a right to assure me they are not going to pay  $4\frac{1}{2}$  per cent. on the Michigan Central."

It is inconceivable that stock of some corporations may never pay more than 4.5 per cent.—a change of management might make a difference. In every instance where an investment is made in stock, for investment purposes, the price is influenced by the hope of increased dividend. Investors in Michigan Central stock did not rely on my advice solely, but on statements of the Michigan Central road—what they see on the market about statements made by the road.

860 No information is conveyed to investors in Michigan Central stock, which does not appear in some report of the Michigan Central. Its report of expenditures for operating expenses, is not taken by investors to be a true statement of actual legitimate operating expenses. The item contains payment for permanent improvements.



"Q. It does not show in the report?

A. It shows that the road is being operated at the rate of three per cent., and that the permanent improvements which last for ten or fifteen years are being charged up for one year.

Q. Does it show that the permanent improvements are being charged to operating expenses?

A. No, sir.

Q. Or does it show the extent of it?

A. No, sir; and that is the trouble of it.

Q. How does the investor know how much of that thing is going on except you advise him on it?

A. I obtain it from the report.

Q. Don't you have any information except what you get from the report?

A. Absolutely none.

Q. And you could not give any except that?

A. No, sir.

Q. You don't know to what extent the permanent improvements are charged to operating expenses?

A. Not in dollars and cents. I only see the ratio of operating expenses to gross earnings, whether they are exorbitantly high or not.

Q. You judge of that condition by comparing that statement with the operating expenses shown by the statements of other railroads?

A. Very largely.

861 Q. And of other railroads which you think are in the same class?

A. Yes, sir.

Q. You assume, for example, if the Lake Shore can operate its railroad for seventy per cent. of its gross earnings, the Michigan Central should do the same?

A. Approximately.

Q. And any expenditures charged in excess of that is really a betterment or permanent improvement?

A. Yes, sir."

I recommend the purchase of the stock and give my judgment of its being a fair investment. Recommendation involves study of the management of the road, whether there are grades or obstacles like the Detroit river, which might have an influence to increase the operating expenses. I also consider the conversation with Mr. Ledyard on the matter, December 1st, when he said he proposed to make this road pay dividends later on of 6 per cent. and that he considered the stock worth \$200. I immediately telegraphed his statements to J. & W. Seligman & Co.

If it turned out that the Michigan Central continued to operate for 20 years without an increase in dividends, I should say they needed a change in management.



Q. Suppose for a period of 20 years in the past, when Michigan Central had been in what you thought good condition, with good management, and had not been able to get over 4 per cent., and had made every effort to discover the trouble, you would swear the stock was worth \$1.50?

A. I certainly would on the present statement.

Q. Take a railroad which for 20 years past paid 4 per cent., and so far as able to ascertain from books or investigation, there was nothing to give assurance of future increase, you would not think 145 a fair price for the stock?

Mr. WYKES: We object to the question as not predicated on facts in the case.

A. If it relates to a road outside of the Michigan Central, should say no.

Q. The point is, you were basing your proposition on what you think the company will do in future, not what it has done in past?

A. I am basing my proposition on this: We are minority stockholders, the effort of a railroad is to get in the minority stock. They don't as a rule, give minority stockholders what they are entitled to, and depreciate rather than appreciate value of stock. In Lake Shore, a large block of stock sold last summer to the Vanderbilts; after it was secured, the Lake Shore raised its dividends to 8 per cent., showing they had been gunning for the stock for a long time. The Michigan Central is going through the same operation, except that in this case, the people owning the stock are friendly to Mr. Ledyard; willing to take their chances under his management and will take his word that the stock is worth 200.

The Vanderbilts own about 19000 shares outstanding, the New York Central owns the eight, since 1898.

#### Redirect examination:

Stock was recently sold in Michigan Central for permanent investment. I would advise the purchase of bonds on 3.75 per cent. basis at present. The basis in the spring of 1902 was better. The Michigan Central sold its 3.5's at about 1.04, that is a 3.25 per cent. basis.

#### Recross-examination:

Morgan paid about 4 per cent. premium for the whole issue, offered them at 107, and sold during the panic at .98.

863

GEORGE F. LORD, sworn as a witness for defendant.

Direct examination by Mr. WYKES :

I am secretary of the Boston stock exchange. The actual sales of stocks and bonds, with the amount of share-of bonds sold, and the sale, bid and asked price, are reported officially by the exchange at the close of business on each day, being taken from the ticker by the printer, printed and furnished to the members of the stock exchange.

These books, marked "Stock Reports, 1901 and 1902," are the sales for two years, day by day, on the Boston stock exchange, and contain the sheets spoken of from January 1, 1901, to December 31, 1902, inclusive. The figures are regarded as authoritative by the trade generally, and by dealers in stocks and bonds, and are the information on which stock exchange transactions are usually based. (Books were marked Exs. 1 and 2, Mar. 16, 1904, and were introduced in evidence.)

Tradings of sales, or bid and asked price of Pere Marquette stocks and bonds, appear in Exhibits 1 and 2.

Cross-examination :

These exhibits contain all official sales reported by the ticker,—contain only what is done on the floor and reported. When a sale is made it is ticked off; the buyer and seller see it at once on the ticker, and at night it is tabulated; the buyer, seller and everybody has a chance to see it and they report to me any error or omission; any errors would be corrected the following day.

864

MELLVILLE W. THOMPSON, sworn as a witness for defendant.

Direct examination by Mr. WYKES :

I have examined Exhibits 1 and 2, March 16, 1904, (volumes containing quotations Boston stock exchange, Jan. 1, 1901, to Dec. 31, 1902, inc., introduced by the secretary of the Boston stock exchange) to obtain information in reference to the bid, asked and sale price and amount and volume of sales, of Pere Marquette stocks.

Q. Read, beginning with August 15, 1901, and extending for one year, ending August 14, 1902, everything indicating the bid asked and sale price of common and preferred stock, at the close of business on each day, also the number of shares sold and price at which sold during each day, of the Pere Marquette railroad company's stock, giving date.

Also, between the same dates, information indicating the volume

and amount of bonds of the Pere Marquette and constituent companies sold and amount and price paid, giving in each instance dates.

Objected to as incompetent and irrelevant.

(Here follows list of bonds of Pere Marquette Railroad Company marked pages 865, 866, 867, 868, 869, 870, 871, and 872.)

**FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED**



873 McKILLVILLE W. THOMPSON, recalled as a witness for defendant testified as follows:—

Direct examination by Mr. BLAIR:

I was present when Prof. Adams described the three different plans for valuing property which he enumerated, one of them being the stock and bond plan. I have made a study of the subject of stocks and bonds of the Michigan Central, and Pere Marquette railroads. I have been engaged about 8 months in my investigations.

Q. What has been your method of investigation, what sources of information have you had access to and how have you used the sources of information at your disposal?

A. I have investigated the values of the bonds and stocks of these roads, principally through the medium of the published records of the transactions, such of the securities as are dealt in on the New York and Boston stock exchanges. I have obtained figures showing the results of transactions on the New York stock exchange from the Commercial and Financial Chronicle. Those on the Boston stock exchange from the Commercial and Financial Chronicle and from the daily sheets of the Boston stock exchange.

I have also obtained such other information as I could from other publications, publications of brokers and from inquiries  
874 among bankers and brokers who make a business of dealing in these securities.

Q. Have you made any use of any official reports made by the railway companies mentioned?

A. Yes, sir.

Q. What reports?

A. I have made use of the reports of both of these roads to the State board of assessors of this State and to the railroad commissioner. Also, I have made some use of the reports of the Michigan Central railroad to the stockholders and of a contract existing between the Michigan Central railroad and Canada Southern railroad during the time in question and since then of the lease from the Canada Southern road to the Michigan Central.

Q. Were you present at the taking of the testimony of Mr. Lisman?

A. I was.

Q. And have you made use of the information given by Mr. Lisman in his testimony?

A. I have.

Q. Is the same true with reference to the testimony of Mr. Wildes?

A. It is.

Q. And you took I think some testimony in Boston but that was simply I believe to authenticate the reports.

A. So I understood, I also read into the record the result of the transactions at the Boston stock exchange.

Q. And you have also made use of that information?

A. I have. When I say the transaction on the Boston stock ex-

change, I mean the transaction on that exchange in securities of the Pere Marquette railway and its subsidiary roads.

Q. Now what was the object which you had in mind in making those investigations?

875 A. I was endeavoring to ascertain the market value of the securities of those roads and their subsidiary and component parts on the second Monday of April, 1902.

Q. Was that your final purpose or was that the means to an end. In other words, were you simply endeavoring to prove on the Pere Marquette or to ascertain the value of the property of the companies through the medium of the values of those securities?

Mr. BUTTERFIELD: That is objected to as incompetent and leading.

A. I was endeavoring to obtain the values of those securities for the purpose of obtaining from the collaborated results thereof the values of the properties of those roads.

Q. Have you made such valuations of the properties of the roads?

A. I have.

Q. Now without asking you any further specific question I will ask you to go on and detail the steps which you have pursued, and wherever proper the reasons to justify the steps taken where different courses might have been open, leading up to the final valuations of those properties.

A. I will first answer the question relating to the Pere Marquette road.

Mr. BUTTERFIELD: Note an objection to this question as incompetent and irrelevant, and I object to the testimony which is about to be given as incompetent and irrelevant.

A. I obtained from the reports of the Pere Marquette railroad and its subsidiary roads to the State board of assessors of this State descriptions of its liabilities and the amount thereof, and in the case of the bonds the rates of interest borne by the bonds and their dates of maturity. These bonds I have listed giving a description  
876 of the issue, a notation of the rate of interest paid thereon and the maturity of the issue and the amount outstanding at par value. The amount outstanding appears to be from the report the same as the entire amount of issue except in the case of one issue a small portion of which is held in the treasury of the company, and I have listed the amount outstanding in that issue as the total amount authorized less the amount in the treasury.

I then proceeded to obtain all of the information obtainable from the sources above enumerated. First as to the values or prices at which actual transactions have been made in the open market on the floor of one of the stock exchanges in New York or in Boston, and I have obtained quotations upon six of the issues in question. I have examined the quotations on those issues particularly and in detail for a term of one year ending August 15th, 1902, being a



period extending four months after the date in question and eight months before.

Upon the **remaining bond issues** which are larger in number but smaller in total amount, I have been unable to find records of actual transactions on these stock exchanges but have obtained such information as I could from bankers and brokers dealing in these securities and other securities and were in a position to place values upon them.

I will enumerate in the order I have them listed the results obtained. The larger part of these issues are underlying bonds of the Pere Marquette railway, being bonds of the various roads that were absorbed into the system. The first is the Flint & Pere Marquette 6 per cent. bonds maturing October 1920, outstanding four millions dollars. I have examined the records of transactions in these bonds as shown by the Chronicle from 1890 down to August 15th, 1902, and the object of examining these records for such a time was to endeavor to ascertain whether the prices shown were normal. I

made a detailed record of the sales of those bonds for the year  
877 ending August 15th, 1902 and I find that there was \$31,000 of these bonds traded in in New York at an average price of 123.07 and accrued interest.

I may state here that the custom of the New York stock exchange is to deal in bonds at flat prices. The meaning of that term being that the price quoted for the bond is the total of the price, of the principal for the accrued interest unpaid at the time of the sale, and for the purpose of eliminating the factor of accrued interest, which varied from month to month I have deducted the amount of accrued interest in each case on each transaction of the bonds on the New York stock exchange.

On the Boston stock exchange the custom is different, their dealings are for principal and accrued interest added to the price, the price makes no mention of the accrued interest that is paid, as it may figure up in addition to the price shown for the sale.

For the sake of avoiding a large number of small fractions in the case of bonds I have taken the first quarter for the fractional price and these bonds averaging from these sales 123.07 I valued at 123. At that valuation the bonds in question yield 4.20 per cent. to the investor, and the total market value of the issue is \$4,920,000.00.

There is an issue of bonds of the Flint & Pere Marquette Company covered by the same mortgage that secures the bonds last referred to. These bonds draw 4 per cent. interest and mature October 1920, and the same date is the maturity of the 6 per cents. just referred to. The amount of this issue outstanding at par is one million dollars. I have been able to find no transactions in these bonds on either stock exchange. I have made inquiry as to their value and I am told by dealers—

Mr. BUTTERFIELD (interrupting): I object to it as hearsay and incompetent.

878 A. (Continuing.) I am told by dealers in Boston that these bonds are worth par or possibly a slight premium, that their security is the same as that 6 per cent. bond referred to. The 6 per cent. bond sold on the market yielding the investor 4.20 but those are premium bonds, and these bonds being bonds of a less rate of interest will sell to yield the investor a slightly better rate.

Q. What is your opinion about that?

A. I think that is unquestionably the case, it seems to me a universal rule, and it is borne out by many quotations appearing on the stock exchange records. I found several publications of brokers dealing in bonds, I found one publication dated January 1902 which gives the market price of a large number of bonds of various railroads.

Q. Whose publication is it?

A. It is a little pamphlet gotten out by Lee, Higginson & Co. of Boston for circulation among their customers.

Q. And who are they?

A. They are bond and stock brokers in Boston and bankers. I have a similar pamphlet for January 1903.

Q. Do they list these particular issues?

A. Yes, sir; they list several of the issues of the Pere Marquette.

Q. Did Mr. Lisman testify in reference to these particular bonds?

A. He did. This pamphlet that I referred to dated January 1902 lists these bonds—

Mr. BUTTERFIELD (interrupting): I object to reading from the pamphlet as incompetent.

A. (Continuing.) At 102. It lists the bonds referred to and valued by me at 123 from the average price on the New York stock exchange at 123½. The following year, January 1st, 1903 it lists these bonds at 100.

879 Q. What did you understand with reference to that publication of Lee, Higginson & Company and listing those bonds at 103, did you understand whether that is the offer on the bonds or the price?

A. No, sir; I don't understand. This is the pamphlet they prepare for the use of their customers, they are very large dealers in bonds and have many customers who will sell bonds through them and they prepare these pamphlets for the information of their customers as being their judgment of the market values.

Mr. Lisman of F. J. Lisman & Company of New York, who was pointed out to me by a number of brokers in New York city as the recognized expert on values of unlisted and inactive securities appraised those bonds at 96 and interest, and I have taken this valuation of those bonds at 96. At 96, those bonds yield the investor 4.30 per cent., and the total market value of the issue was \$960,000."

The following table and the notes thereto shows the results of my

investigations with reference to the Pere Marquette stocks and bonds, the table showing both in the case of stocks and bonds the amount of each issue outstanding at par, the stock exchange transactions (average), the amount accepted by me as the value of the various securities, the value of the issue and the value of the sales during the year, and in the case of the bonds, also the date of the maturity of the respective issues, Lisman's valuation thereof, the value shown in Lee, Higginson pamphlet and the return to the investor.

Description.	Rate of interest.	Maturity.	Amount outstanding at par.	Stock exchange transactions. Average.	Lisman's value.	Lee Higginson pamphlet.	Accepted as value.	Value of issue.	Return to investor.	Volume of sales during year.
Bonds:	%									
Flint & Pere Marquette.....	6	Oct. 1920..	\$4,000,000	123.07	123.5	.....	123	\$4,920,000	4.20	\$31,000
Flint & Pere Marquette.....	4	Oct. 1920..	1,000,000	.....	6a	102	96	960,000	4.30	.....
Flint & Pere Marquette, con.	5	May 1939..	850,000	112.9	.....	.....	113	3,220,500	4.30	36,000
Flint & Pere Marquette, Port Huron division.....	5	Apr. 1939..	325,000	113.33	.....	114	113.25	3,765,563	4.29	71,000
Flint & Pere Marquette, Toledo division.....	5	July 1937..	400,000	.....	107.5	113a	107.5	430,000	4.55	.....
Chicago & West Michigan...	5	Dec. 1921..	5,751,000	109.30	109	109.5	109.25	6,290,615	4.30	272,000 +
Chicago & West Michigan, (coupon script).....	5	.....	56,510	.....	100	.....	100	56,510	.....	.....
Chicago & North Michigan..	5	May 1931..	1,667,000	109.225	109	109	109.25	1,821,198	4.45	45,000
Detroit, Grand Rapids & Western .....	4	Apr. 1946..	5,379,102	99.987	.....	100	100	5,379,102	4	222,500
Grand Rapids, Newaygo & Lake Shore .....	7	June 1905..	19,000	.....	107	.....	.....	20,330	4.50	.....
Saginaw, Tuscola & Huron...	4	Aug. 1931..	1,000,000	.....	92.5	98	92.5	925,000	4.45	.....
Pere Marquette.....	4	Jan. 1951..	3,200,000	.....	90	95	90	2,880,000	4.50	.....
Pere Marquette Transportation Company.....	6	\$20,000 ann..	100,000	.....	100	.....	100	100,000	6b	.....
Michigan Equipment Company.....	6	Jan. 1902..	157,000	.....	100	.....	100	157,000	6c	.....
Western Equipment Company.....	6	Apr. 1909..	92,000	.....	102.5	.....	102.5	95,325	5.55	.....
Marquette Equipment Company.....	5	Oct. 1910..	924,000	.....	100d	100a	100	924,000	5	.....
Grand Rapids, Belding & Saginaw.....	5	Mar. 1924..	260,000	.....	102.5	107a	102.5	260,500	4.80	.....

Grand Rapids, Kalamazoo & Southeast.	5	Apr. 1907..	200,000	.....	102.5	.....	102.5	.....	205,000	4.45	.....
Total.....			\$30,388,612						\$32,416,643		
Unfunded debt:											
From report to board of as- sessors <i>g</i> .....											
From examination of books.....			\$1,211,621								
Accrued interest on funded debt <i>h</i> .....			339,625								
			360,295								
Total unfunded debt.....			\$1,911,541						\$1,911,541		
Total debt.....			\$32,300,153						\$34,328,184		
Stocks:											
Preferred stock.....											shares.
Common stock.....			\$12,000,000		84.25				\$10,110,000		11,865
			16,000,000		80 $\frac{3}{4}$				12,860,000		33,364
Total debts and stock.....			\$60,300,153						\$57,298,184 <sup>e</sup>		

*a* Does not include accrued interest.  
*b* Steamboat bonds, which brings lower prices than railroad bonds.  
*c* Close to maturity.  
*d* These bonds may be drawn at par, hence appraised at par.  
*e* Deduct property not used for railroad purposes, per Walker, \$730,000; per report, Exhibit 7, February 1904, page 34, \$121,570.71.  
*f* See Lisman's testimony.  
*g* Report to board of assessors, 1902, page 31—figures as of April 30.  
*h* Report to board of assessors, 1902, page 59—figures as of April 30.

881 In obtaining the average price at which sales were made, the bonds in each transaction were multiplied by the price, the actual prices for the entire sale, so obtained, were totaled and divided by the par amount of bonds sold, thus giving greater weight to large than to small transactions.

The Pere Marquette report to the Michigan State board of assessors (1902) gives the unfunded debt as of April 14th, as \$1211621; I was told by the auditor, that these figures were as of April 30th.

Mr. BUTTERFIELD: I move to strike out statement of what the auditor told witness as incompetent and irrelevant.

(Under objection to statement of what witness found on examination of Pere Marquette books as incompetent.)

I found by their general ledger that in addition to the debts reported, (on page 31 just given,) they owed \$339625.

(Under objection of irrelevant.)

The books were examined pursuant to the agreement on the record in this case, that I should have the privilege of examining the Pere Marquette records to obtain information desired for use in this case, to save bringing into court all of their books and many of their clerks.

On the New York exchange, the record in the Financial Chronicle does not show the price at which each individual transaction was made; it shows the prices at which sales were made during each day, on which there were sales and the total volume during the week. I have taken the average price during the week, multiplied it by the total number of transactions in the same week obtaining the average price on the New York exchange.

I find the total value of all property of the Pere Marquette railroad in the judgment of the owners of its securities as shown by market dealings, to be \$57,298,184. To obtain the value for  
882 railroad purposes, the value of property not used for railroad purposes must be deducted.

And the remainder was apportioned to Michigan by multiplying by 98.0667278 per cent. (being the percentage of track mileage in Michigan, as shown by report to board of assessors,) deducting track-age rights in the State, but including mileage of the Chicago & West Michigan of Indiana, out of the State.

I understood Mr. Lisman to give the issues upon which there were actual market transactions at prices shown by market transactions, and he stated that his judgment was that they were worth the market price, and that he did not assume to vary in appraisal from the market price, as he was obtaining it from the reports.

(Mr. BUTTERFIELD moves to strike out the comment with reference to Mr. Lisman's testimony, as it shows for itself what he said and what it means.)

Q. You may give now your computation with reference to the Michigan Central.

A. The Michigan Central presents a somewhat different problem from the Pere Marquette. The Pere Marquette is a single corporation and the various bond issues given are underlying bonds, all of which are assumed by the Pere Marquette railroad, at least all but one, and in one of them they guarantee the interest, one small issue of \$200,000.00; whether they guarantee the principal as well upon that I could not say. But the relationship between these subsidiary roads and the Pere Marquette is not one of lease or contract but they actually control the roads through ownership of their property, of the security. In the Michigan Central system there are in Michigan properties that the Michigan Central does not itself directly own but which it controls through lease; there are other properties in which it owns a majority of the capital stock but not any of the properties in which it owns all of the capital stock. There are also properties that are a part of the Michigan Central system in Michigan whose stocks are owned by the Canada Southern railway and whose bonds are owned by the Canada Southern railway, which railway also owns evidences of other debts against these roads.

A specific instance of the latter condition would be the Michigan, Midland & Canada all of whose stocks, debts and bonds are owned by the Canada Southern railway, and all of which Michigan Midland & Canada is in Canada.

A similar condition exists as to the Toledo, Canada Southern & Detroit Railway Company, except that a small portion of this road is not in Michigan. Whatever value there may be or is in the stocks and bonds of these various railroads last referred to—and some of them must have great value; is included within the value of the capital stock of the Michigan Central and Canada Southern roads, and to compute the value of this property I found it necessary to compute the value of all the outstanding securities of the entire system that are in the hands of the public. To explain the latter phrase, I mean in the hands of the public just the securities actually outstanding and not owned intercorporally. To do this I have made a sheet for the tabulation of all the securities outstanding as shown by the reports of the railroads where I could obtain such report, and where I could not obtain such reports through State officials I have obtained the figures shown in the Commercial & Financial Chronicle and Poor's Manual. I have arranged all of these issues in columns and in the first column, which I will refer to column 1 appears the total amount of the issue at par.

In column 2 appears the amount of such issue owned either by the Michigan Central railroad or by the Canada Southern railroad, at par.

And in column 3 the difference between the figures shown in column 1 and column 2, being the remainder of amount outstanding in the hands of the general public, and by the general public I mean all the persons or corporations than the Michigan Central railroad and Canada Southern railroad.

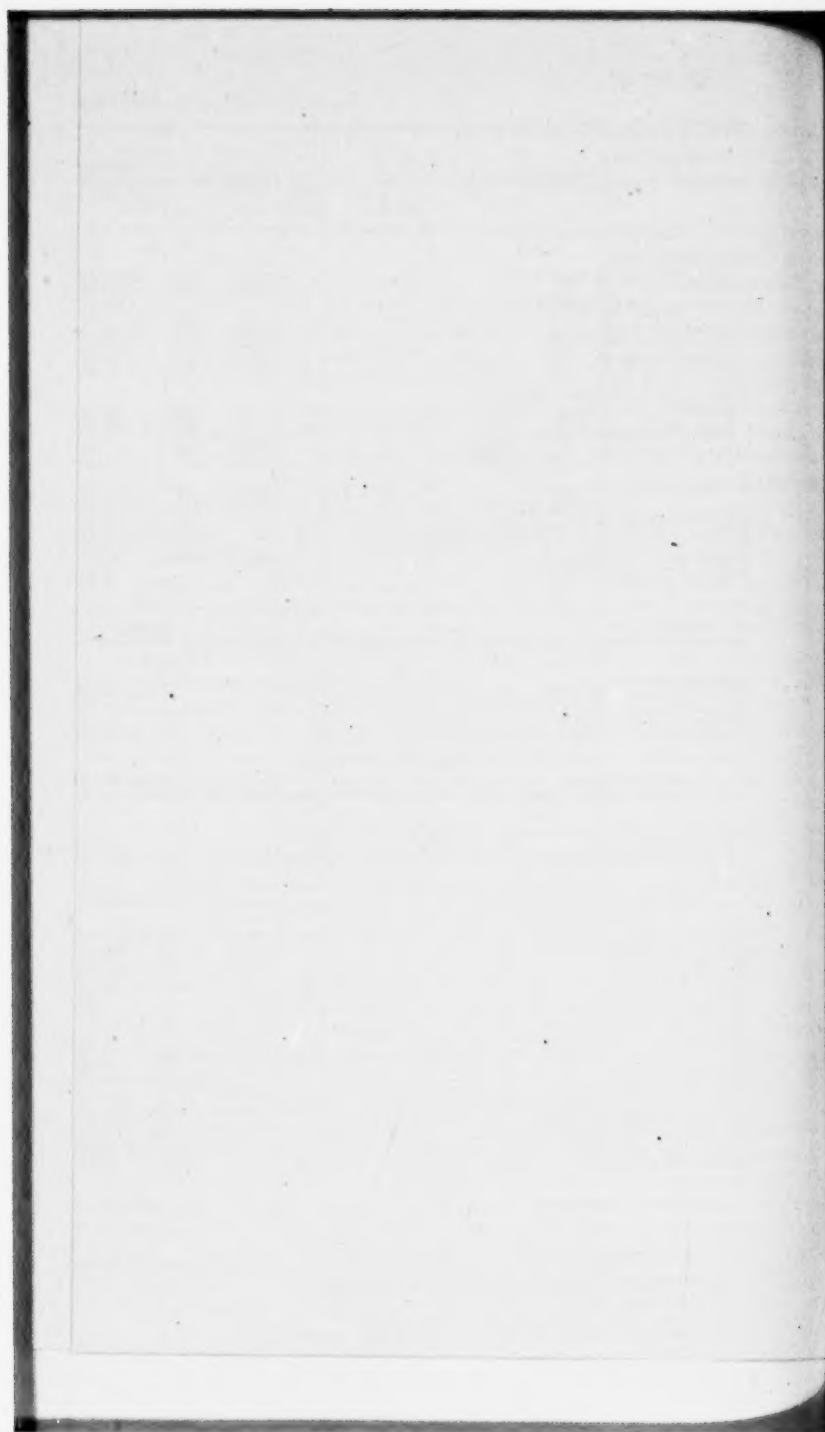


To such remaining amounts outstanding in the hands of the public I have applied the market rates as I have learned them and computed the market valuation of the securities outstanding in the hands of the public.

The following table (including the notes thereto) shows the results of my investigation with reference to the stocks and bonds of the Michigan Central railroad, showing in the case of both stocks and bonds, the amount outstanding at par, the amount owned by the Michigan Central and Canada Southern at par, the amount in the hands of the general public at par, the stock exchange transactions (average), the value accepted by me, the market value of the amount in the hands of the public, the return to the investor in per cent, and the value of sales at par. And in the case of the bonds, the dates of maturity of the respective issues, and Lisman's valuation of the same where given, the latter relating also to certain stock issues guaranteed by the Michigan Central.

(Here follows list of stocks and bonds of the Michigan Central R. R. Co. marked page 885.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED



886 The Michigan Central bonds secured by mortgage on the main line due June 1, 1902, had but 15 days to run; there were considerable sales between Aug. 15, 1901, and May 1, 1902, at an average of 100.85, after deducting accrued interest; while they would have commanded a slight premium on April 15th, the time to run was so short I valued them at par.

The \$2,000,000 Michigan Central bonds, secured by the same mortgage and maturing at the same time, drawing 5 per cent., were valued at par. At that time, time money was worth about 5 per cent., and bonds having but few months to run ordinarily sell on a time basis. These bonds were refunded May 1, by two leases of 8 and 2 millions par at  $3\frac{1}{2}$  per cent., due in 50 years.

The bonds were sold by the Michigan Central at 104.5, which would net investors 3.315 per cent. They were sold to a banking house. With the usual margin of profit, the ultimate buyer would receive less than 3.315 per cent.; if at an advance of 1 per cent., 3.275 per cent. If they were held by the banking house until a later time and sold at a loss, the loss would be the result of a change in the market.

The bonds secured on the Terminal railroad due July 1941, \$725,000 were never on the market. Mr. Lisman, stated he understood them all to be owned by one person, and while they were intrinsically of equal value with Air Line bonds, of the same rate, due about the same time, because they had never been offered, they would have a less market value, and he appraised them at 109, yielding the investor 3.53 per cent.

In the bonds secured on the Grand River Valley (due 1909, \$1500000), there was a transaction of \$600,000, one June 2, 1901, 119; two on June 7, 1901, for \$15,000, at 118.75; one April 19, 1901, of \$5,000, at 118.5. The accrued interest at time of sale would be 1.85 per cent., 1.62 per cent. and .82 per cent., leaving the net price with accrued interest added at 117.15, 117.13 and 117.58.

887 Had these bonds longer to run, they would presumably have sold for slightly higher prices in the spring of 1902, as the bond market was higher than at the dates given; Mr. Lisman appraised them at 116. These were high rate bonds, and would sell at a slightly less premium than low rate bonds as the purchaser at a premium has his premium returned to him, in small amounts, from year to year, in the form of a portion of the interest paid; they are therefore considered somewhat less desirable than bonds at a price near par.

I found a number of bid and asked prices on portions of the issues of bonds given, on which I found no transactions; comparing Mr. Lisman's value with a number of these, I found the bid and asked prices in a number of instances higher than Lisman's valuation. I have in all cases taken the lower valuation given by him.

Q. How did you figure this Canada Southern to make that return?

A. I figured that on the most favorable basis to the investor, that

is to say upon a  $2\frac{1}{2}$  per cent. dividend rate. It is true that for 4 years they paid but 2 per cent. but during the fiscal year in which I have taken these valuations they paid on such part of the fiscal year as was the calendar year of 1901 but 2 per cent. and in the calendar year 1902, they paid  $2\frac{1}{2}$  per cent. only, a part of which came into this fiscal year, but on the most favorable basis I have taken it and computed the return to the investor on the basis of  $2\frac{1}{2}$  per cent. for an investment of  $85\frac{1}{2}$ . Did I take the average between 2 and  $2\frac{1}{2}$  per cent. during the fiscal year the rate would be lower; that however, I have not computed.

Taking the Michigan Central stock at  $161\frac{1}{2}$ , the value of its debts and stock is \$95,019,656: at 200, is \$102,210,363.

888 The total value of the debts and stocks of these roads at market price is the equivalent of the market value of all the property of the system, and some of the property of the system consists of real estate and possibly other property not used for railroad purposes.

From the total arrived at by this process should be deducted the market value of such property; that being done the remainder would be the market value of all the property of the system used for railroad purposes. Having obtained such remainder a multiplication of that remainder by the percentage 68.5620 per cent. would give the value of the property in the State of Michigan computed on the track mileage basis and including in the total track mileage of the system 14 miles of track from Kensington to Chicago.

Q. Why did you multiply by 68 and a fraction—have you stated that?

A. The total mileage of the system including the 14 miles from Kensington to Chicago is 1,657.74 miles; the length of the portion of the road within Michigan is 1136.58 miles. These figures appear on the report of the Michigan Central railroad to the State board of assessors. These figures may be found on page 12 of such report, also upon page 17 and also upon page 73 of the same report of Defendant's Exhibit # 8, February 19, 1904. The division of the figures representing the mileage within Michigan by the figures representing the mileage in its entirety gives the figure of the percentage that the lines within Michigan bear to the entire lines, and that percentage is 68.56202, as above given.

890 Cross-examination by Mr. BUTTERFIELD:

My experience is of character to qualify me for my testimony. I was four or five years bookkeeper in a bank; subsequently a bookkeeper, then manager and secretary of National Wheel Company, Jackson; subsequently vice president and secretary (six or eight years) of Jackson Wheel Company; president of H. B. Clafflin Co. of Mississippi; have been interested in other corporations and co-partnerships. In the corporate positions held I have been active

manager and have given particular attention to the accounting department.

The National Wheel Co. was a corporation with a capital stock of \$45,000, owning real estate and having an unfunded debt.

The Jackson Wheel Co. had no real estate \$20,000 capital stock was paid in; personal property and nominal debts, if any. The value of its stock depends upon the result of impending litigation.

If the litigation of the Michigan Central affected its value, this was shown in market prices of the securities. I appraised the property of the Jackson Wheel Co. once a month for two or three years.

The appraisal would not include intangible values. I once appraised the property of a co-partnership (Clafin Co. manufacturers of wheel materials), for purpose of transforming it into a corporation. It possessed intangible property; being the value of the organization of the business as a going concern. The original cost of the property was twenty to thirty thousand dollars. The Jackson Wheel Co. and H. B. Clafin Co. are not now going concerns.

The period, over which market values of stocks, bonds and debts of the Michigan Central and Pere Marquette railroads were examined, was discussed with and influenced by Prof. Adams, Mr. Greene and others.

891 Mr. Greene stated that the custom in New York was to take an average for 6 months; Mr. Adams and I agreed that it would be more accurate to take results for one year. The adoption of a year was my opinion, corroborated by that of Prof. Adams and Mr. Greene.

I can not say that Messrs. Adams or Greene directed the method of ascertaining that market price during the year; I ascertained the facts from every source of information acting (without positive instruction) under the guidance of Mr. Adams and the attorney general; they instructed me to obtain the results of actual transfers, and where those could not be had, to obtain such information as possible from persons whose business led them to know such values; they did not point out the persons.

I never reached the conclusion that I had all the information obtainable. I obtained such as I could and have practically all information obtainable from the public records. The conclusion that I have obtained all I could is my own, assisted by counsel with bankers, brokers and dealers, who have directed me to sources of information. I found many things I didn't use.

I used information from the Financial Chronicle reports of the Boston stock exchange, Poor's Manual, De Ghuee's bond values and testimony of expert witnesses in New York, including the valuation fixed by F. J. Lisman.

By comparison of values obtained with actual transactions and published reports on other bonds I obtained what I think to be a relative value of every bond and find that Mr. Lisman in all instances placed a somewhat lower value; believing his to be conservative, I have taken that. On inquiry I find Mr. Lisman is a

recognized authority on such matters. While not competent to pass upon the value of any security standing by itself, by obtaining information I could form an opinion by comparison of one security with another; and could as an accountant, find and have  
892 found the average price appearing from printed reports, which does not necessarily involve an opinion of the securities value. I found in many cases, records in the Chronicle of values on various of these securities though there were no records of transactions in them on the stock exchange; the Chronicle publishes one set of figures giving actual transactions, another which it states is believed to be reliable quotations on stocks and bonds.

Mr. Lisman furnishes the Chronicle many of these figures and is accepted as the most competent person to give them. Mr. Lisman impressed me as being extremely conservative; his figures (in testimony) in cases being below the prices given in one sheet of the Chronicle as quotations on inactive securities.

In cases they give similar results and in others higher. It is evident that Mr. Lisman in his testimony gave lower figures than he had furnished to the Chronicle; I think prices were not given to Chronicle with the same desire to be conservative and low. Mr. Lisman stated to me that he wished to be conservative and repeatedly said: "I am a director in a railroad in Michigan myself, and my tendency is to be conservative on Michigan valuations.

Every indication of the man, his manner and way of putting in his valuation, and his comments on them and a comparison of his prices with those made by Boston brokers, leads me to believe him very conservative. I have not used a portion of the Chronicle giving an opinion of the value of securities, but have used the information of Mr. Lisman.

Although convinced in instances that securities might reasonably have been valued higher, I have relied on Mr. Lisman's judgment. So far as unlisted and inactive securities are concerned my testimony rests for its accuracy on the opinion of Mr. Lisman. To obtain lists of securities, descriptions and amount outstanding, I resorted to publications referred to. For amount outstanding, Poor's Manual and the Chronicle.

On listed securities Mr. Lisman gave his opinion that the value was equal to the market price and give price current. I found  
893 the average for year and the market price current April 14, 1902, very close, and have used average for year ending August 15, 1902; the use of this period was directed by Prof. Adams.

In my opinion it is a proper method. This date selected because of a desire to take one year's quotation and that was a period 4 months later after and 8 months before assessment date. I made computations of securities for other periods than this, *e. g.* found Canada Southern stock, April 14, selling at 88½; which influenced me to believe that the result of the year ending August 15, being but few points different from the price on that day, gave a fair ex-



position of the value of the stock on that day. I desired to find the market value of securities on April 14, 1902, so took transactions before, as well as after that date.

The transactions subsequent to April 14 have an influence on the computation and on value on the 14th. I didn't take the year ending April 14, 1903, as that would give a year entirely after, nor the year ending 6 months after April 14, 1902, as Mr. Adams directed me that the period in the past should have more influence than the period to come, that 4 months after and 8 before would be fair and reasonable and that was my opinion.

I cannot give the reasons influencing me to form this judgment. Had we taken the current year previous to April 14, 1902, that would have increased Pere Marquette values somewhat, and would have left Michigan Central near where they are.

I made no computation prior to the determination of the period to be taken; it is purely a matter of judgment that 8 months before and 4 after April 14 should be taken. A study of the general market condition, which we made before adopting the period, indicated that such period would give a fair valuation as of the spring of 1902.

The period was selected by Mr. Adams, and I cannot give the reasons that guided him. It appeared to me that an average taken entirely before April 14 might include conditions less typical of those of the date in question than if an average extending over a fair length of time after that date were taken.

894 I should consider normal any conditions that followed the general trend of the whole market. If the securities of a particular road seemed out of line with the general trend of the market, abnormal conditions might be discovered.

Q. If you were considering the stock of a corporation  $\frac{1}{16}$  of which was, and for four or five years had been, owned by another corporation, so the market transactions were necessarily confined to sales of portions of  $\frac{1}{16}$  of the stock, would you consider that the market condition shown by sales of that fraction of the stock, normal and should be used as a guide to valuation of the entire stock?

A. I think I would, unless I found indications that the policy of the corporation was such as to prevent transactions in the small minority stock from reaching their normal level.

Q. If in the same corporation, certain persons had made effort to accumulate the minority stock or portion outstanding in the hands of the public, on the theory that the company had not been paying in the past a dividend as large as it might pay, would you think that constituted an abnormal condition to detract from the reliability of market quotations as an evidence of value of all the stock?

A. Under those circumstances I think market quotations would be less than true value.

In Michigan Central stock I think the market quotations, on the minority stock were less than the stock's real value as a whole.

So far as information from public records is obtainable, the average of 161 $\frac{1}{2}$  was shown to be the market value of Michigan Central stock. From my study of the Michigan Central and its relation with other companies, my opinion is, were the purchasers of stock in position where they could obtain an equal voice in management, prices would go much higher; the average market price for the year does not represent the true value of Michigan Central stock.

It is possible for average market price to be greater than 895 the actual value of the stock. I have studied relations between the Michigan Central and Canada Southern and have discovered a contract between them. I have taken occasion to notice market quotations of Canada Southern within the last year; which are below the average for period in question. It averages 65 to 70 which I think is the real value of the stock. Canada Southern has not fallen off from the level of 1902 as much as some other stocks.

My testimony is of the cash value at the time. Relatively the cash value of stocks is less at present than it was; which would apply to a large number of the stocks testified to, though Pere Marquette common is now relatively higher. Transactions in Canada Southern were so large that I could not express an opinion that the cash value of the stock would vary from the market. I made comparative studies of sales of Canada Southern stock in a number of years, and am unable to see any striking departure between one year and another. For a number of years past, transactions in Canada Southern stocks have been large.

From the banking quotation supplement of the Chronicle for first week of 1904, transactions in Canada Southern stock 1903 were 47,580 shares, par value \$4758,000, price Jan. 2, 1903, 77 to 78; in December, 1903, low point was 65, high 68.5. During the period examined, sales in almost all railroad stocks traded in on the market were large, those of Canada Southern not larger in proportion than other active stocks.

If it were the fact that the Vanderbilt interests were attempting to secure a majority of Canada Southern stock, I should consider that an indication that the market price showed it was worth more money and so sold for more. Where some interest makes effort to acquire a majority of the stock of a corporation for purpose of control, I should say that was an evidence of the stock's value at that time, a normal condition and fair index of the stock's real value. I would not consider conditions of that kind as abnormal.

896 I remember the instance when Northern Pacific went to \$1,000 a share. It was due to effort to acquire control. I think if an average were taken for a year, the sale at a thousand would be so trivial in comparison that it would not affect the average perceptibly and would not include it in the average.

An illustration of abnormal price is in a railroad (Michigan Central) which for many years shows high earning capacity, the stock of which is almost all owned by one interest, and a change of manage-

ment changes dividends to a very low figure, which renders stock unattractive to investors generally for fear they may have to hold their stock an indefinite time before receiving what they deem a fair share of the profits of the road.

The average price there would not be a fair guide to the stock's true value, would be abnormal, meaning a repressed condition in which natural forces were not permitted to bring price to the normal.

I took average for one year but investigated Michigan Central conditions for 20 or 30 years. By comparison of conditions should judge prices of Michigan Central in the year investigated were abnormally low. My opinion is that the average obtained for the year ending Aug. 15, 1903, does not represent the true value of the stock. The detailed figures taken to determine the average market price of Michigan Central stock are (from Commercial and Financial Chronicle) as follows:

897	Period or date. <i>a</i>	Volume of shares sold.	Price.	
			High.	Low.
	1901.			
Oct. 28	.....		116	116
Oct. 29	.....		140	118
Oct. 30	.....		138	138
Nov. 1	.....		130	130
Week ending Nov. 1	.....	1,300		
Nov. 2	.....		128	128
Nov. 4	.....		136	136
Nov. 6	.....		<i>b</i> 138	<i>c</i> 130
Nov. 7	.....		139.5	139.5
Nov. 8	.....		<i>b</i> 140	<i>c</i> 130
Week ending Nov. 8	.....	400		
Nov. 11 <i>d</i>	.....		135	135
Week ending Nov. 15	.....	10		
Nov. 20	.....		140	140
Nov. 21 <i>d</i>	.....		150	140
Week ending Nov. 22	.....	867		
Nov. 23	.....		170	170
Nov. 25	.....		180	175
Week ending Nov. 29 <i>e</i>	.....	300		
Dec. 4	.....		170	170
Week ending Dec. 6	.....	100		
Dec. 19	.....		156	156
Week ending Dec. 20	.....	100		
	1902.			
Jan. 17 <i>d</i>	.....		160	156
Week ending Jan. 17	.....	113		
Mar. 7 <i>d</i>	.....		150	150
Week ending Mar. 7	.....	25		
Mar. 8 <i>d</i>	.....		150	150
Mar. 11 <i>d</i>	.....		150.5	150
Mar. 14 <i>d</i>	.....		150	150
Week ending Mar. 14	.....	200		

Period or date, <i>a</i>	Volume of shares sold.	Price.	
		High.	Low.
Mar. 24 .....		150	150
Week ending Mar. 28 .....	100		
Mar. 31 .....		150	150
April 1 .....		150	150
April 3 <i>d</i> .....		155	152
April 4 .....		155	152
Week ending April 4 .....	1,012		
April 11 .....		158.5	155
Week ending April 11 .....	250		
April 14 .....		160	159
April 17 <i>d</i> .....		160	160
Week ending April 18 .....	425		
April 22 <i>d</i> .....		160	160
April 24 .....		179.5	168
April 25 .....		278	178
Week ending April 25 .....	874		
April 26 .....		178.75	175
April 28 .....		185	179
April 29 .....		192	185
April 30 .....		187	186
Week ending May 2 .....	2,020		
May 10 .....		178	178
May 12 .....		175	175
Week ending May 16 .....	200		
May 26 .....		175	175
Week ending May 30 .....	100		
June 2 <i>d</i> .....		175	170
Week ending June 6 .....	120		
June 20 .....		175	173
Week ending June 20 .....	400		
June 21 .....		173½	173½
Week ending June 27 .....	100		
Aug. 5 .....		174.75	170
Week ending Aug. 5 .....	1,700		

*a* Where no sales are shown none took place. *b* Asked. *c* Bid. *d* Includes a sale of less than 100 shares. *e* Bid and asked prices went as high as 200.

898 I am unable to state from the Financial Chronicle the number of different transactions and amount of each sale is not given.

That Michigan Central stock varied from 118 to 140 in one day looked to me as though somebody was getting on the fact that Michigan Central stock ought to be worth more than it had been selling for.

The information from the Chronicle was all I had. In each week I took all low and high prices at which sales were made and obtained the stated average for the week; multiplied that by the number of shares sold in that week; continued this from week to week; at the end divided the total of the figures so obtained by the multiplication just referred to, by the total number of shares traded in,

and that gave to each week its weight and to sales between dates in each week no weight was given, they were taken by stated average. Final result does not give the same weight to a sale of one share as of a thousand shares, each week is given due weight according to the number of sales.

Had it happened in the week ending Nov. 1, 1901, that there was one sale of 100 shares at the low price and another of 1200 at the high price, the average would have been the same as now; also if there had been sales of 1200 shares at a low price, and 100 at a high price.

An individual sale is not given due weight or lack of weight in the average. The market at this time was strong, and in an examination of sales, where there is a wide variance, a strong market almost always shows the greater bulk of sales made toward the top price.

In the final average I have given sales of each week proportionate weight on the assumption that all in the week were at the average of the week, ascertained in the method pointed out. Assuming that the average of sales was the stated average each week was given its due weight according to the number of shares. For a number of weeks the internal evidence makes it clear that the stated average for the week is the weighted average, so the proportion of occasions in which there is a variation from a mathematical average is small. I made no use of bid and asked prices where there were no sales.

Undoubtedly if the period averaged had been one year prior to April 14, the results would have been slightly different. The lowest price used was 116; after a period of 4 months when there had been no sales. The fact that there were no sales for three or four months prior to the year did not I think, come to our knowledge before the year was adopted. At this time I contemplated the valuation of all the stocks of Michigan railroads, and a general study was given to market conditions but not to those affecting particular roads.

From the Financial Chronicle it appears there were no sales of Michigan Central in 1901, previous to October, except March; low, 107.25; high, 107.25.

The quotations for 1900 by months are as follows:

	High.	Low.		High.	Low.
January.....	110	108	July.....	105	105
February.....	112	108	August*.....	.....	.....
March.....	108	108	September.....	112	105
April.....	109	109	October*.....	.....	.....
May.....	108	108	November.....	105.5	105.5
June.....	115	108	December.....	105	105

\*No sales.

Quotations on Pere Marquette from the Chronicle for 1901 previous to October were as follows :

	High.	Low.		High.	Low.
January .....	43	33.75	May* .....		
February .....	65	41	June .....	75	53
March .....	61½	58.5	July .....	75	74.25
April .....			August .....	70.25	70.25

The Pere Marquette was formed and I believe went into the market in January 1900. Its quotations from the Chronicle for 1900 were :

1900	High.	Low.		High.	Low.
January .....	20.25	20	July .....	24.25	22.75
February* .....			August .....	23.5	22
March .....	29.25	21	September* .....		
April .....	26.75	23½	October .....	24	22.5
May .....	25.5	23½	November .....	32	27
June .....	25.25	23	December .....	35	31.5

When the fiscal year was adopted, it was intended to use it in making a stock and bond valuation of all Michigan railroads; a general examination of the trend of the market was made; some stocks were higher before and some after the middle of April, 1902, and a fair average period for the whole seemed to be the year ending August 15, 1902.

Q. For the period used, the market as a whole on Pere Marquette and Michigan Central was substantially higher than for the year and a half before, wasn't it?

A. Absolutely; yes, relatively, no, in the Michigan Central the latter part of the time; relatively; yes, in Pere Marquette for the first part of 1900—the corporation had just been formed and it was a new and untried stock on the market.

I included in the value of the Michigan Central property its unfunded or floating debt; the amount used is stated in the report to the board of assessors to be as of April 14, 1902, by Mr. Burt as of April 30, 1902; (figures taken from report to board of assessors, Exhibit 8, Feb. 19, 1904) The report states these figures to be the condition on the 30th of June 1902.

I am certain I didn't misunderstand Mr. Burt, he may have misunderstood me and been referring to material and supplies on hand. I have said the aggregate of liabilities was the value of the property and have treated the unfunded debt as an element of that value. In obtaining the total value of liabilities, I included all unfunded debt.

To the extent of increased indebtedness of the company the stock becomes less valuable. The fact that the Michigan Central owes money, I don't think has anything to do with the value of its property.

901 The amount of debts or fact of indebtedness has no direct relation to its property, but the total valuation of the liabilities of a corporation, is the estimate of those persons to whom liabilities were given as the total valuation of the property.

The debtor has recourse to the property of the corporation prior to the rights of stockholders. Therefore, the stockholders' estimate of the value of the stock, necessarily takes into account the existence of those debts prior to their own claims.

Other things being equal, as the floating debt increases the value of the stock would decrease providing the floating debt was not contracted in purchase of additional property, in which case the stocks' value would presumably remain unchanged. As a general proposition the amount of floating debt will affect the value of the stock of a corporation.

What the debt was incurred for might make some difference in the results as shown by the quotation; it would not affect the system of computation.

The primary purpose is to obtain the total market value of the liabilities of the corporation. The true value of all liabilities equals the true value of all of the property; I include all floating debts, regardless of its character or what contracted for.

If on April 14, 1902 the Michigan Central had a floating debt of a million dollars which was on April 14, 1903, increased to two millions, my valuation on the second date would be a million dollars more than on the day before, if conditions and market quotations on the other securities remained the same—I should assume that market valuations on the other securities took into consideration the fact of increase or possible or probable increase in floating debt.

Q. Suppose you decided to estimate the value of the property on April 14, 1903 by reference to the market for the year ending April 13, 1903, taking an average of quotations; that the floating debt remains at a million dollars throughout the entire period;  
902 if it should happen that the floating debt increased a million dollars on the 14th, over what it was on the 13th, your valuation would be a million dollars more, by reason of that increase upon that day?

A. The average of quotations to that day would not be affected by the addition of a million dollars on that day, which would be a plain showing that you can take a number of quotations beyond that date with a view of reflecting the conditions which might have occurred about that date, which would not show in market quotations until later.

In the question above value on the 14th, would be one million dollars higher than on the 13th, by reason of the increase of unfunded debt; if it occurred in purchase of property that would be



worth a million more; if thrown away, the valuation would be a million dollars out of the way until stockholders found a million of their property was gone, when quotations would presumably fall.

If it were a judgment for damages, the stockholders would probably know of the existence of the lawsuit and discount the possible judgment.

Q. If on the 14th a judgment for a million dollars damages for a tort is enforced, then if the judgment had been discounted, you add a million dollars to the value of the property because of that million of debt?

A. And thereby give a true value, because if the judgment were not given as you state the discount you refer to in the price of the stock on the market would have undervalued the property. The valuation arrived at on the 13th would be the value of the property less the hazard of the impending judgment.

My theory would take into consideration quotations beyond the date.

If we only took quotations before the day on which the value was ascertained, the valuation would be a million dollars higher on the day after than the day before judgment was rendered. I endeavored

to get the floating debt on the 14th, but don't think that that  
903 would vary much between the two dates. It was the opinion

of Prof. Adams and myself that the floating debt should be included,—it seemed to me a self-evident fact. Prof. Adams gave instructions to include it.

Q. Why isn't it sufficient to estimate the value of a property supporting a bonded debt by ascertaining its face?

A. The maturity of the debt is at a deferred time and such bonds as command a premium are obligations for a larger rate of interest than the market rate; by so much as the rate of interest is greater than the market rate, the bonds command a premium and earnings applicable to the benefit of its stockholders are reduced by the excessive rate of interest. To become absolute owner of all the property of the Michigan Central one must become the owner of its bonds, other debts and stock and the price at which he would have to purchase would be the cost of securing ownership of all the property.

The maximum payment the company will be called upon to make as the result of an issue of bonds is the principal and interest; the holder collects the face of the bond at maturity and interest and premium as he goes along; the premium is returned to him in the form of excessive interest; by so much premium as has been returned to him by excessive interest, the stock has been deprived of opportunity to participate in larger dividends and market value of the stock is depressed from what it would be had the bonds drawn a low enough rate of interest to be at par.

De Ghuee's Bond Value gives the rate of interest bonds will net to investors at various premiums, provided he holds the bond until maturity.

Q. That is different from a net return to the investor, if he holds the bond until some period before maturity and sells at the same premium at which he bought?

A. He would not presumably sell at the same premium, but would sell at one proportionate to that paid on par value at maturity.

904 A man might buy forty year bonds at a premium, hold them 10 years and sell them for as much or more than he paid; in that case the returns to the investor might be higher than the figure given in De Ghuee. In figures of net return to investor given, I have given De Ghuee every time; the net returns given in his figures are necessarily those investors in that class of security are content with on the market basis at the time. If the investor in a premium bond sells before maturity at the same price at which he bought, he gets a net return, according to De Ghuee plus the increase in price indicated by the same table at a later date; this would indicate an increase in the value of his property.

905 I included the \$14,000,000 Canada Southern bonds in my valuation at 105.25, the net return to investor being 4 per cent.

Q. In ascertaining the value of unlisted securities in which there were no market transactions, your plan is to arrive at it by a mathematical calculation based on the rate of net return you assume a proper one?

A. No, sir; that which in the opinion of the market in transactions of similar securities is shown to be their conception of the proper rate.

Due weight is given to the fact of there being no transactions in the market, as purchasers of such bonds might insist on obtaining them at a slightly lower price.

On guaranteed stocks, where no maturity figure, to find the rate of return to the investor, it is only necessary to divide the dividend rate by the price paid or divide par by the dividend rate—the interest rate satisfactory to the purchaser, to obtain the total price.

Market value of the stock may be influenced by a belief on the part of the investor that the dividend rate will be increased in future.

The market value of Michigan Central stock during the period studied was affected by the knowledge on the part of investors that the company could well afford to pay a higher dividend and a belief that it would some time do so. There was a rise in Michigan Central stock about the time it arranged for refunging its main line mortgage, which would reduce its interest charge \$310,000 a year,—an amount sufficient to raise the dividend rate by one half.

The case just referred to indicated a large surplus in the property or earning power of the Michigan Central.

Q. Should it turn out that for ten to twenty years in future the Michigan Central did not, and could not be compelled to pay  
906 higher than four per cent. dividend, an investment in its stock would turn out a poor one, wouldn't it?

A. If people allowed themselves to be discouraged and threw their stock overboard at less than they believed it worth, they would be showing poor judgment and that would make it a poor investment. That condition has existed a good many years.

To secure 5 per cent. net return on the investment, investors in Michigan Central stock could afford to pay 80, assuming the dividend does not increase beyond 4 per cent. He may get a return in the enhanced amount of property he owns. If he holds for ten years and the dividend remains at 4 per cent. and he then sells, his net return would be less than 5 per cent. if he paid more than 80. The return on Canada Southern 5 per cent. bonds due 1908, at 105.25, is 4 per cent.

This is very near the figure in De Glue's tables and I used 4 per cent. because of that fact. The 4 per cent. is the net return upon such investment as remains outstanding to the investor year by year after reducing his original investment of 105.29 by an excessive interest returned to him each year in interest payment on the bond. A thousand dollar bond bought at 105.29, held for a year, and sold at 105.29 would net the investor 4 per cent. and eight dollars additional (the eight dollars may represent increase in value of bond during that time). The net return to the investor would be \$58, or about 4.75 per cent.

Different purchasers of bonds would be guided by their own conditions as to payment of taxes; some pay taxes on bonds and some do not. I think it a question of individual circumstances and that the grand average of all individual circumstances make a market. I assume market value to be the same in Michigan as in New York; impossible for it to be different; there would be no wider variation than the rate of exchange on money between Michigan and New York.

I think investors in this class of securities are content with 3½ to 3¾ per cent. I made no particular investigation of the question of taxation on those issues. I saw no materiality to it.

Whether the bonds spoken of are legal investment for savings banks, I think important in determining their value.

I understand the securities of the classes testified about were largely held by savings bankd. Should the court hold cash value to be the selling price at the place where situated, this would not necessitate an amendment of the plan of valuation on account of bonds and securities being subject to taxation in Michigan; if they became the ultimate property of New York savings banks, the only difference between Detroit and New York would be the exchange on money paid, which would be at a premium, rather than at a discount.

(MR. BUTTERFIELD: I move to strike out all the testimony of this witness on direct examination, in relation to values of stocks, bonds and floating debts of roads of Michigan, on the ground that the

witness has not shown himself competent to give an opinion on the subject.)

Redirect examination.

Purchase of premium bonds and their sale at the end of a year at the same price after collecting interest, might occur on a rising market for bonds, which would make bonds of the same class more valuable than the year before. As a rule, when a man buys those bonds, he expects to receive nothing except interest, and that by the time the bond matures, he will have received back the premium in the form of interest.

In the computations made and testified to by me, I have endeavored to follow the stock and bond plan outlined by Mr. Adams. I have been testifying as an accountant or computer in giving the results of transactions from such records and data as I could secure.

908 (Under objection of incompetent.)

I have made very careful investigation as far as I could do so during the time afforded. My employment in this case is as assistant to Prof. Adams.

909 M. W. THOMPSON recalled.

The figures appearing on Exhibit 1 (April 2, 1904), are correctly taken from the printed or public records or originals. I have performed the computations resulting in figures in this exhibit, which are correct.

The figures used in the stock and bond computation on the Pere Marquette system, were to August 15th, 1902.

(Under objection of incompetent and irrelevant.)

The quotations of stocks from the Commercial and Financial Chronicle, for next year, are:

Pere Marquette, Common.

	Low.	High.		Low.	High.
1902.			1903.		
August .....	78	79	April .....	78.5	87½
September .....	79.5	85.5	May .....	86.25	91.5
October .....	80	82.5	June .....	83.5	87
November .....	80	83	July .....	74	85.5
December .....	80	82.5	August .....	76	79½
1903.			September .....	75	77½
January .....	80	82	October .....	75	77.75
February .....	79	84½	November .....	75	81
March .....	76	82	December .....	80	84

Pere Marquette, preferred : 1902, September, low 85 ; high 93 ; November low 82.5.

Pere Marquette preferred stock is not much dealt in in New York; both preferred and common are dealt in more largely in Boston.

I made an average of New York transactions in Pere Marquette during the period of 1903, being 46,071 shares, at an average of 80,854. I compared prices in Boston, they run about the same.

909a M. W. THOMPSON, for defendant.

Direct examination—MR. TOWNSEND:

Referring to Ex. 8, Feb. 19, 1904, report of Michigan Central to State board of assessors for 1902,—and to Ex. 7, Feb. 19, 1904, report of Pere Marquette to State board of assessors for 1902, the witness testifies to, and makes apportionment of cash and supplies on hand, of date of April 30, 1902, as follows:

Name of company.	Apportionment track, miles.		Ratio.	Total cash and supplies, including credits.	Total cash and supplies, excluding credits.	Michigan proportion.
	Entire mileage.	Michigan mileage.				
Mich. Central*.....	1,643.74	1,136.51	69.045072 5	\$4,379,685 58		\$1,908,386 5
Mich. Central .....	1,643.74	1,136.51	69.045072 5		\$1,561,303 30	2,472,687 0
Pere Marq.....	1,830.22	1,785.04	98.060728 5	2,377,363 76		2,331,408 0
Pere Marq.....	1,830.22	1,785.04	98.060728 5		1,511,200 84	1,602,043 22

\* Omits 14 miles Kensington to Chicago.

† Witness did not make computations excluding credits.

Aggregate mileage does not include 14 miles between Kensington and Chicago, as Mr. Burt informed me that company derives no net revenue from that portion of line.

The report of Pere Marquette to State board of assessors gives cash on hand is \$31,082.79. The correct amount as given to me by the assistant auditor is \$370,708.26, a deduction being made, before reporting of amount owed for labor. The larger amount was used (The information acquired by witness from assistant auditor Pen Marquette and auditor Michigan Central pursuant to understandings on record, (p. 1158, '9.)) I saw, the entry used, on the Pen Marquette books.

(The items from report objected to as incompetent and irrelevant.)

(Mr. Pond moves to strike out that part of witness' testimony referring to what he was told by Mr. Burt as incompetent.)

910 JAMES WALKER, recalled for defendant.

I am consulting engineer to the State board of assessors, and since October 24, 1900, have been engaged in valuing railroad property. I acted as an advisor to the State board of assessors in the first valuation of railroad property under act 173 of 1901. I studied and abstracted the information contained in the railroad companies'

reports to the board of assessors, the railroad commissioner, the Interstate Commerce Commission and to adjoining States, and presented the resolutions to the board in session. I was present at the sessions of the State board of assessors for value of railroad property, except the final two. My duties included advising the board in an expert capacity of the value of the railway properties under consideration.

I have since the first valuation made a careful and detailed valuation of the Pere Marquette, and Michigan Central properties, and my conclusions for April, 1902, upon such subsequent valuation are the same as the recommendations I made to the board. It is shown by the annual report that the board considered in its assessment all plans of valuation, the stock and bond inventory, and the capitalization of net earnings.

(Subject to objection of incompetent, irrelevant and leading.)

I followed in substance the same plan, my plan being based upon a consideration of all the elements surrounding the property. It is necessary to have knowledge of the physical condition to know the amount of its stocks and bonds and current liabilities; whether the latter item was small or large and of what it consisted; whether it was likely to be funded or refunded by the ordinary operation of the road; to know whether the interest and dividends had been paid on the securities; to examine the income account of the road and its operating account over a series of years; to know whether at the particular time of investigation the operation was the result  
911 of an extraordinary condition of the times or not; to examine the operating expenses with reference to the matter of inclusion of permanent improvements; to know in short, whether permanent improvements were being made on the property,—that is, extraordinary repairs and renewals; to see, if such permanent improvements had been made, to what account they had been carried, which in a measure would indicate the relative prosperity of the road with other roads; to note the cost of construction and present physical value of the physical properties; to know the traffic conditions under which the road operates and has operated in the past; its geographical relation to other properties, and finally from the result of all investigations with regard to the nature of the property, to arrive at an amount which would be the selling price of that property.

I mean that in order to value a railroad property you must consider every feature that surrounds it before you can definitely arrive at its value. I investigated and understood all these elements and conditions before reaching my final conclusion.

I first considered the report to the board of assessors, which states the value of the Michigan Central property including constituent lines, as \$27,602,000.

The company's report was admitted by its representatives, Mr. Butterfield and Mr. Russel, to be on a 75 percent. basis. Reducing

this to a 100 per cent. basis gives for the Michigan Central system \$36,802,666, and this figure conforms closely to Mr. Cooley's physical valuation of 1900. The Michigan Central Railroad Company paid as taxes on property not used in operation, the sum of \$12,395.98. The value of this property can be found and can be deducted by a capitalization of the tax.

The reports of the constituent companies of the Michigan Central from which the figures of value of property in the railroad  
912 business are taken, used the description for the Michigan Central proper: "Right-of-way and structures situated thereon, and all other real property in use for railroad purposes, exclusive of station facilities." The reports of the subsidiary companies use in addition the phrase, "including station facilities."

The contention of the company on review was that the valuation should be reduced by local real estate not used for railroad purposes. If such contention be admitted, the tax capitalized at 16.55329, the tax rate, would equal \$748,853 and should be deducted.

For 1900, Mr. Cooley finds the cost of reproduction of the Michigan Central to be \$42,903,869, and the present value to be \$35,463,517. The \$36,802,666 reported by the company as the property's value is not more than the physical value, with allowance for changes between 1900 and 1902. From an examination of the reports making an allowance for the increased price of material and the conservative nature of the right-of-way valuation, I think the present value of the physical property in April, 1902, was considerably in excess of Mr. Cooley's 1900 valuation.

He found for 1902 a present physical value of \$43,151,815, on a track mileage apportionment, and \$42,502,843 on a car mileage apportionment. My estimate of the present physical value in 1902 for the use of the board of assessors, was \$41,500,000.

An objection here made to testimony of this character as incompetent and irrelevant.

From the reports of the railroad company to the railroad commissioner in 1900 and 1901, the cost of the Michigan property of the Michigan Central system to 1900 is stated as \$51,106,657, and to 1901, \$49,314,026.

The Defendant's Exhibit No. 8, Feb'y 19, 1904, being the  
913 report to the board of assessors, page 37, shows the cost to June 30th, 1902, to be \$45,191,755. These figures shown in the book of accumulative cost, would be higher except that the company charges permanent improvements to operating expenses.

The average annual increase in the tonnage of the system for Michigan for 1897 to 1901 was about 12 per cent. The freight tonnage has a gradual increase from 1881 to 1901, from 4,196,896 to 11,026,766 tons, being over 150 per cent. The comparative tonnage for Michigan and the entire system, taken from the reports of the



company to the commissioner of railroads from 1897 to 1901, is as follows:

Year.	Entire system.	Michigan.
1897.....	7,627,176	6,035,627
1898.....	8,648,157	6,790,843
1899.....	10,018,043	8,134,871
1900.....	10,171,001	8,366,011
1901.....	11,026,766	8,905,454

The increase in mileage from 1896 to 1902, taken from the report to the Interstate Commerce Commission is from 1,608.27 to 1,657.74 in 1902.

(The witness produced a compilation of traffic statistics of the Michigan Central system from the reports of the commissioner of railroads from 1896 to 1901, the figures in which were by me correctly taken from the reports to the railroad commissioner, also percentage calculations indicating gains or losses. These are as follows:

**EXHIBIT 2. March 28, 1904.**  
Michigan Central Traffic Statistics.  
From Reports to Michigan Railroad Commissioner.

	1896.		Train Mileage.		1897.	
	Entire.		Michigan.		Entire.	
	Numbers.	Miles.	Rate.	Miles.	Numbers.	Rate.
Miles run by passenger trains during the year.....	4,237,946	60.96	.....	4,179,934	156,317,124	.....
Miles run by freight trains during the year.....	5,741,905	.....	.....	2,610,057	.....	.....
Miles run by mixed trains.....	507,507	.....	.....	3,172,995	.....	.....
Total mileage of trains earning revenue.....	10,487,358	.....	.....	355,813	.....	.....
Number of through passengers carried, earning revenue.....	220,467	.....	.....	.....	.....	.....
Number of local passengers carried, earning revenue.....	2,343,592	.....	.....	.....	.....	.....
Total passengers carried, earning revenue.....	2,465,059	.....	.....	.....	.....	.....
Number of passengers carried one mile.....	156,317,124	.....	.....	.....	.....	.....
Average distance carried.....	.....	60.96	.....	.....	.....	.....
Average amount received from each passenger.....	.....	1.38	.....	.....	.....	.....
Average receipts per mile for through passengers.....	.....	.....	.....	.....	.....	.....
Average receipts per mile for local passengers.....	.....	.....	.....	.....	.....	.....
Average receipts per passenger per mile for all passengers.....	.....	.....	.....	.....	.....	.....
Number of through passengers carried, earning revenue.....	220,474	.....	.....	.....	.....	.....
Number of local passengers carried, earning revenue.....	1,880,400	.....	.....	.....	.....	.....
Total passengers carried, earning revenue.....	2,100,874	.....	.....	.....	.....	.....
Number of passengers carried one mile.....	90,541,682	.....	.....	.....	.....	.....
Average distance carried.....	.....	43.10	.....	.....	.....	.....
Average amount received from each passenger.....	.....	\$1.02	.....	.....	.....	.....
Average receipts per mile for through passengers.....	.....	.....	.....	.....	.....	.....
Average receipts per mile for local passengers.....	.....	.....	.....	.....	.....	.....
Average receipts per passenger per mile for all passengers.....	.....	.....	.....	.....	.....	.....

Michigan.  
2,477,329  
3,330,313  
342,302  
6,149,944

Rate.  
.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

.....  
.....  
.....  
.....

Miles.

.....  
.....  
.....  
.....

Rate.

	1898.	1899.
	Entire.	Michigan.
Miles run by passenger trains during the year	4,217,144	2,515,540
Miles run by freight trains during the year	6,548,649	3,577,860
Miles run by mixed trains	495,114	344,853
Total mileage of trains earning revenue	11,870,217	6,438,253

	Numbers.	Miles.	Rate.	Numbers.	Miles.	Rate.
Number of through passengers carried, earning revenue	212,729	.....	.....	245,833	.....	.....
Number of local passengers carried, earning revenue	2,387,303	.....	.....	2,632,175	.....	.....
Total passengers carried, earning revenue	2,600,032	.....	.....	2,878,175	.....	.....
Number of passengers carried one mile	144,505,752	.....	.....	165,057,169	.....	.....
Average distance carried	.....	55.58	.....	.....	57.35	.....
Average amount received from each passenger	.....	.....	\$1.237	.....	.....	\$1.251
Average receipts per mile for through passengers	.....	.....	.020679	.....	.....	.019727
Average receipts per mile for local passengers	.....	.....	.022903	.....	.....	.022744
Average receipts per mile per passenger for all passengers	.....	.....	.022250	.....	.....	.021818

	Numbers.	Miles.	Rate.	Numbers.	Miles.	Rate.
Number of through passengers carried, earning revenue	189,904	.....	.....	218,855	.....	.....
Number of local passengers carried, earning revenue	1,760,690	.....	.....	2,017,693	.....	.....
Total passengers carried, earning revenue	1,950,594	.....	.....	2,236,548	.....	.....
Number of passengers carried one mile	89,830,005	.....	.....	99,754,610	.....	.....
Average distance carried	.....	46.05	.....	.....	44.60	.....
Average amount received from each passenger	.....	.....	\$1.059	.....	.....	\$1.031
Average receipts per mile for through passengers	.....	.....	.020255	.....	.....	.022294
Average receipts per mile for local passengers	.....	.....	.024067	.....	.....	.023446
Average receipts per passenger per mile for all passengers	.....	.....	.022694	.....	.....	.023209

916

## Train Mileage.

	1900.		1901.	
	Entire.	Michigan.	Entire.	Michigan.
Miles run by passenger trains during the year .....	4,299,212	2,513,572	4,684,913	2,664,368
Miles run by freight trains during the year .....	7,588,105	4,325,769	7,153,822	4,081,541
Miles run by mixed trains during the year .....	519,894	377,973	495,746	359,289
Total mileage of trains earning revenue .....	12,407,211	7,217,314	12,334,481	7,104,198

## Passenger Traffic, Entire Lines.

	1900.		1901.	
	Numbers.	Rate.	Numbers.	Rate.
Number of through passengers carried, earning revenue .....	274,857	.....	320,469	.....
Number of local passengers carried, earning revenue .....	2,737,436	.....	3,079,606	.....
Total passengers carried, earning revenue .....	3,012,293	.....	3,400,075	.....
Number of passengers carried one mile .....	177,330,729	.....	228,293,565	.....
Average distance carried .....	.....	58.87	.....	67.14
Average amount received from each passenger .....	.....	1.291	.....	\$1.366
Average receipts per mile for through passengers .....	.....	.019748	.....	.018992
Average receipts per mile for local passengers .....	.....	.022941	.....	.021350
Average receipts per passenger per mile for all passengers .....	.....	.021935	.....	.020343

## Passenger Traffic, Michigan.

	1900.		1901.	
	Numbers.	Rate.	Numbers.	Rate.
Number of through passengers carried, earning revenue .....	242,359	.....	320,255	.....
Number of local passengers carried, earning revenue .....	1,976,562	.....	2,330,664	.....
Total passengers carried, earning revenue .....	2,218,921	.....	2,650,919	.....
Number of passengers carried one mile .....	109,945,494	.....	120,572,226	.....
Average distance carried .....	.....	49.55	.....	45.48
Average amount received from each passenger .....	.....	\$1.112	.....	\$1.062
Average receipts per mile for through passengers .....	.....	.020118	.....	.018992
Average receipts per mile for local passengers .....	.....	.023881	.....	.025715
Average receipts per mile for all passengers .....	.....	.022711	.....	.023545

	1896.			Freight Traffic, Entire Lines.			Rate.
	Tons.	Miles.		Tons.	Miles.		
917							
Number of tons through freight carried earning revenue.....	1,823,439			1,879,938			
Local freight carried, earning revenue.....	5,452,831			5,747,238			
Total freight carried, earning revenue .....	7,276,270			7,627,176			
Total mileage of through freight.....		777,661,725				803,654,390	
Total mileage of local freight.....		702,589,796				729,951,677	
Total freight mileage, or tons carried one mile.....		1,480,251,521				1,533,606,067	
Average ton haul for through freight.....		426				427	
Average ton haul for local freight.....		129				127	
Average ton haul for all freight.....		199				201	
Average amount received for each ton haul.....							\$1.24
Average receipts ton per mile, for through freight.....							.00484
Average receipts ton per mile, for local freight.....							.00762
Average receipts ton per mile, for all freight.....							.00616
Through freight carried, earning revenue.....							
Local freight carried, earning revenue.....							
Total freight carried, earning revenue .....							
Total mileage of through freight.....		421,703,050				426,274,290	
Total mileage of local freight.....		247,517,340				259,983,540	
Total freight mileage, or tons carried one mile .....		669,220,390				686,257,830	
Average ton haul for through freight.....		148				147	
Average ton haul for local freight.....		86				83	
Average ton haul for all freight.....		117				114	
Average amount received for each ton haul.....							\$0.80
Average receipts ton per mile, for through freight.....							.00554
Average receipts ton per mile, for local freight.....							.00958
Average receipts ton per mile, for all freight.....							.00707

918

	Freight Traffic, Entire Lines.			1899. Miles.	Rate.
	1898. Miles.	Tons.	Rate.		
Number of tons through freight carried, earning revenue.....	2,001,823	2,366,079			
Local freight carried, earning revenue. ....	6,646,334	7,631,964			
Total freight carried, earning revenue.....	8,648,157	10,018,043			
Total mileage of through freight.....	882,878,010			1,048,260,415	
Total mileage of local freight.....	782,280,068			902,353,972	
Total freight mileage or tons carried one mile.....	1,665,158,078			1,950,614,387	
Average ton haul for through freight.....	441			443	
Average ton haul for local freight.....	118			118	
Average ton haul for all freight.....	191			195	
Average amount received for each ton haul.....	\$1.15				\$1.10
Average receipts ton per mile, for through freight.....	.00463				.00420
Average receipts ton per mile, for local freight.....	.00728				.00713
Average receipts ton per mile, for all freight.....	.00597				.00562
Freight Traffic, Michigan.					
Through freight carried, earning revenue.....	3,167,958	3,944,221			
Local freight carried, earning revenue.....	3,622,885	4,190,650			
Total freight carried, earning revenue.....	6,790,843	8,134,871			
Total mileage of through freight.....	484,586,590			589,913,758	
Total mileage of local freight.....	292,677,395			358,893,684	
Total freight mileage, or tons carried one mile.....	777,263,985			948,807,442	
Average ton haul for through freight.....	153			150	
Average ton haul for local freight.....	81			86	
Average ton haul for all freight.....	114			117	
Average amount received for each ton haul.....	\$0.81				\$0.78
Average receipts ton per mile, for through freight.....	.00545				0.00491
Average receipts ton per mile, for local freight.....	.00948				.00926
Average receipts ton per mile for all freight.....	.00710				.00667

	Freight Traffic, Entire Lines.			1901. Miles.	Rate.
	1900. Miles.	Rate.	Tons.		
Number of tons through freight carried earning revenue.....	2,102,849	.....	2,427,803		
Local freight carried, earning revenue.....	8,264,669	.....	8,598,963		
Total freight carried, earning revenue.....	10,367,518	.....	11,026,766		
Total mileage of through freight.....	970,265,390	.....	.....	1,090,269,805	
Total mileage of local freight.....	1,035,837,450	.....	.....	989,383,865	
Total freight mileage, or tons carried one mile.....	2,006,102,840	.....	.....	2,079,653,670	
Average ton haul for through freight.....	461	.....	.....	449	
Average ton haul for local freight.....	125	.....	.....	115	
Average ton haul for all freight.....	193	.....	.....	189	
Average amount received for each ton haul.....	.....	\$1.15	.....	.....	\$1.17
Average receipts ton per mile, for through freight.....	.....	.00437	.....	.....	.00471
Average receipts ton per mile, for local freight.....	.....	.00737	.....	.....	.00762
Average receipts ton per mile, for all freight.....	.....	.00592	.....	.....	.00618
Freight Traffic, Michigan.					
Through freight carried, earning revenue.....	3,770,895	.....	4,394,443		
Local freight carried, earning revenue.....	4,595,116	.....	4,521,011		
Total freight carried, earning revenue.....	8,366,011	.....	8,915,454		
Total mileage of through freight.....	596,420,127	.....	.....	637,525,455	
Total mileage of local freight.....	376,430,222	.....	.....	404,204,016	
Total freight mileage, or tons carried one mile.....	972,850,349	.....	.....	1,041,729,471	
Average ton haul for through freight.....	158	.....	.....	145	
Average ton haul for local freight.....	82	.....	.....	89	
Average ton haul for all freight.....	116	.....	.....	117	
Average amount received for each ton haul.....	.....	\$0.81	.....	.....	\$0.83
Average receipts ton per mile for through freight.....	.....	.00549	.....	.....	.00551
Average receipts ton per mile for local freight.....	.....	.00899	.....	.....	.00928
Average receipts ton per mile, for all freight.....	.....	.00697	.....	.....	.00711



## Page 14.

## Comparative Traffic Statistics.

## Analysis Passenger Traffic.

## Passenger train mileage, system :

The passenger train mileage of 1897 shows a loss, in comparison with 1896, of about 1.36 per cent. ; 1898, a gain over 1897 of 0.89 per cent. ; 1899, a loss from 1898 of about 2 per cent. ; 1900, a gain over 1899 of 4.05 per cent. ; a gain over 1900 of about 9 per cent., and 1901 shows a gain over 1896 of a little over 10½ per cent., or an average annual increase of about 2.1 per cent.

## Passenger train mileage, Michigan :

1897 shows a loss, as compared with 1896, of about 5.08 per cent. ; 1898 a gain over 1897 of about 1.54 per cent. ; 1899, a loss from 1898 of about 1.73 per cent. ; 1900 shows a gain over 1899 of about 1.69 per cent. ; 1901, a gain over 1900 of about 6 per cent. ; and 1901, a gain over 1896 of 2.075 per cent., or an average annual increase of 0.415 per cent.

## Freight train mileage, system :

The mileage of 1897 shows an increase over 1896 of about 6.08 per cent. ; 1898 a gain over 1897 of about 6.07 per cent. ; 1899, a gain over 1898 of 7.65 per cent. ; 1900 over 1899 of 7.65 per cent. ; 1901, a loss from 1901 of 5.73 per cent. ; while 1901 shows a gain over 1896 of 24.55 per cent., or an average annual increase of 4.91 per cent.

## Freight train mileage, Michigan :

1897 shows an increase over 1896 of about 4.96 per cent. ; 1898, a gain over 1897 of 7.45 per cent. ; 1899, a gain over 1898 of about 12.75 per cent. ; 1900 over 1899 a gain of 7.20 per cent. ; 1901 shows a loss from 1900 of about 5.65 per cent. ; while 1901 shows a gain over 1896 of about 28.60 per cent., or an average annual increase of 5.72 per cent.

## Mixed train mileage, system :

This mileage shows no important change from 1896 to 1901, being 507, 507 miles in 1896 and 495,746 miles in 1901, the largest variation being 1900, when 519,894 miles were made.

## Mixed train mileage, Michigan :

This mileage shows no important changes from 1893 to 1901, being shown as 355,813 in the former, as against 359,289 in the latter, the largest variation being again in 1900, when 377,973 miles were made.

Total train mileage, system :

The mileage of 1897 shows an increase over 1896 of about 3.06 per cent.; 1898, a gain over 1897 of 4.16 per cent.; 1899, a gain over 1898 of 3.67 per cent.; 1900 over 1899 a gain of 6.28 per cent.; 1901 a loss from 1900 of 0.585 per cent.; while 1901 shows a gain over 1896 of 15 per cent., or an average annual increase of about 3 per cent.

Total train mileage, Michigan.

1897 shows a gain over 1896 of about 0.183 per cent.; 1898, a gain over 1897 of about 4.70 per cent.; 1899 over 1898 a gain of 6.53 per cent.; 1900 over 1899 a gain of 5.25 per cent.; 1901 shows a loss from 1900 of 1.58 per cent.; while 1901 shows a gain over 1896 of 13.6 per cent., or an average annual increase of 2.72 per cent.

Through passengers, system :

1897 shows a loss from 1896 of about 1.84 per cent.; 1898, a loss from 1897 of 1.71 per cent.; 1899, a gain over 1898 of 15.52 per cent.; 1900, a gain over 1899 of 11.80 per cent.; 1901, a gain over 1900 of 16.68 per cent.; while 1901 shows a gain over 1896 of 45.3 per cent., or an average annual increase of 9.06 per cent.

Local passenger, system :

1897 shows a loss, as compared with 1896, of 4.42 per cent.; 1898, a gain over 1897 of 6.59 per cent.; 1899, a gain over 1898 of 10.24 per cent.; 1900 a gain over 1899 of 4.0 per cent.; 1901, a gain over 1900 of 12.47 per cent.; 1901 a gain over 1896 of 31.5 per cent.; or an average annual increase of 6.30 per cent.

Total passenger, system :

1897 shows a loss, as compared with 1896, of 4.20 per cent.; 1898, a gain over 1897 of 5.83 per cent.; 1899, a gain over 1898 of 10.70 per cent.; 1900 over 1899, a gain of 4.64 per cent.; 1901, a gain over 1900 of 12.90 per cent.; while 1901 shows an increase over 1896 of 32.6 per cent.; or an average annual increase of 6.52 per cent.

Passenger mileage, system :

1897 shows a loss from 1896 of 1.22 per cent.; 1898, a loss from 1897 of 6.40 per cent.; 1899, a gain over 1898 of 14.26 per cent.; 1900 over 1899, a gain of 7.44 per cent.; 1901, a gain over 1900 of 28.72 per cent.; while 1901 shows a gain over 1896 of 46.2 per cent., or an average annual increase of 9.24 per cent.

Average passenger distance, system :

The following are the average distances for the years 1896 to 1901 inclusive: 60.96 miles; 26.87 miles; 55.58 miles, 57.85 miles;

58.85 miles. The increase of 1901 over 1896 is 6.18 miles, or 10.5 per cent. As an annual increase this averages 2.1 per cent.

Average passenger amount, system :

The amounts received from each passenger from 1896 to 1901 inclusive are as follows : \$1.38- \$1.37- \$1.237- \$1.251- \$1.201- 922 \$1.366. Attention is called to the fact that the average amount in 1901 is but \$1.05 per cent. less than in 1896, although this item shows a falling off in intermediate years. The point to be especially noted is that, while the amount for 1901 is but a little more than 1 per cent. less than in 1896, the total number of passengers had increased from 2,564,058 in 1896 to 3,400,075 in 1901.

Passenger receipts per mile, system :

This subject is noted in the foregoing tables under three heads, namely : Through passengers ; local passengers and all passengers.

The rates on through passengers, for the years shown are as follows : .020295- .020117- .020679- .019727- .019748 and .108296. This is a total loss in 1901 from 1896 of 9.85 per cent., or an average annual loss of 1.97 per cent. The number of through passengers, however, increased from 220,467 in 1896 to 320,469 in 1901.

The local passenger rates for each year were as follows : .024003- .022620- .022903- .022744- .022941- and .021350. This is a loss in 1901 over 1896 of 11.2 per cent., or an average annual loss of 2.24 per cent. It will be observed, however, that the number of local passengers carried increased from 2,343,592 in 1896 to 3,079,606 in 1901.

The average rates for all passengers for each of the years were as follows : .022682- .021749- .022250- .021818- .021935 and .020343. The rate in 1901 is 10.3 per cent. less than the rate in 1896, showing an average annual loss of 2.06 per cent., but the total number of passengers carried in 1896, 2,564,059, increased in 1901 to 3,400,075.

Through passengers, Michigan :

1897 shows a loss, as compared with 1896, of 1.87 per cent. ; 1898, a loss from 1897 of 12.21 per cent. ; 1899, a gain over 1898 of 15.25 per cent. ; 1900 over 1899, a gain of 10.71 per cent., 1901, a gain over 1900 of 32.25 per cent. ; 1901, a gain over 1896 of 45.25 per cent., or an average annual increase of 9.05 per cent.

Local passengers, Michigan :

1897 shows a loss from 1896 of 5.67 per cent. ; 1898, a loss from 1897 of 0.735 per cent. ; 1899, a gain over 1898 of 14.60 per cent. ; 1900, a loss from 1899 of 2.04 per cent. ; 1901, a gain over 1900 of 18 per cent. ; 1901 a gain over 1896 of 23.90 per cent., or an average annual increase of 4.78 per cent.

**Total passengers, Michigan :**

1897 shows a loss from 1896 of 5.28 per cent. ; 1898, a loss from 1897 of about 2 per cent. ; 1899, a gain over 1898 of 14.66 per cent. ; 1900, a loss from 1899 of 0.82 per cent. ; 1901, a gain over 1900 of 19.50 per cent. ; 1901 a gain over 1896 of 26.20 per cent., or an average annual increase of 5.24 per cent.

**Passenger miles, Michigan :**

1897 shows a loss, as compared with 1896 of 4.47 per cent. ; 1898 a gain over 1897 of 3.86 per cent. ; 1899, a gain over 1898 of 11.05 per cent. ; 1900, a gain over 1899 of 10.20 per cent. ; 1901 a gain over 1900 of 9.71 per cent. ; while 1901 shows a gain over 1896 of 33.20 per cent., or an average annual increase of 6.64 per cent.

**Passenger distance, Michigan :**

The distances for each of the years from 1896 to 1901 inclusive are as follows: 43.10 miles ; 43.46 miles ; 46.05 miles ; 44.60 miles ; 49.55 miles and 45.48 miles. This item shows comparatively little change through the interval between 1896 and 1901, reaching its high point in 1900. The increase in 1901 over 1896 is 2.38 miles or an increase of 5.54 per cent.

**Passenger amount, Michigan :**

The amounts received from each passenger for the series of years from 1896 to 1901 inclusive, are as follows: \$1.02- \$1.01- \$1.059- \$1.031- \$1.112- \$1.062. The increase for 1901 is 4.05 per cent., but the amount in 1901 as compared with 1896, should be specially noted in connection with the number of passengers carried in each of those years, as the latter year will show a large increase over 1896.

**Passenger receipts per mile, Michigan :**

For through passengers, the rate each year is as follows: .01584-.020775- .020255- .022294- .020118 and .018992. The rate per mile for 1901 is nearly 20 per cent. higher than in 1896, although it will be noted that the high point was reached in 1899, when the rate was over 2 1/5 cts. per mile. The difference in the rate of 1901 over 1896 is of especial importance when taken in connection with the increased number of through passengers in the whole year of 1896.

The local passenger rates show for each year, as follows: .02886-.024462- .024097- .023446- .023881- .025715- The rate in 1901, it will be observed is about 10.9 per cent. lower than that of 1896, but comparison should be made of the numbers of local passengers carried in each of the years.

The rates for all passengers for the years in succession were as follows: .02732- .023229- .022994- .023209- .022711 and .023345.

The rate in 1901 is shown as about 14.6 per cent. less than in 1896. By referring to the subject above, total passengers, Michigan, it will

be noted that the number carried in 1901 was 2,650,919 as against 2,100,874 in 1896.

### Analysis Freight Traffic.

#### Through freight tons, system :

In 1897, the increase over 1896 was 3.10 per cent. ; 1898 over 1897, 6.50 per cent. ; 1899 over 1898, 18.21 per cent. ; 1900 shows a loss from 1899 of 11.1 per cent. ; 1901 shows a gain over 1900 of 15.45 per cent. ; while 1901 shows a gain over 1896 of 33.20 per cent., or an average annual increase of 6.64 per cent.

#### Local freight tons, system :

1897 shows a gain over 1896 of 5.40 per cent. ; 1898, a gain over 1897 of 15.60 per cent. ; 1899 over 1898 of 15.05 per cent. ; 1900, a gain over 1899 of 8.02 per cent. ; 1901 a gain over 1900 of 4.05 per cent. ; and 1900 over 1896 of 57.80 per cent., or an average annual increase of 11.56 per cent.

#### 924 Total freight tons, system.

1897 shows a gain over 1896 of 4.84 per cent. ; 1898, a gain over 1897 of 13.35 per cent. ; 1899, a gain over 1898 of 15.82 per cent. ; 1900, a gain over 1899 of 3.48 per cent. ; 1901 over 1900 of 6.36 per cent. ; 1901 over 1896 of 51.60 per cent., or an average annual increase of 10.32 per cent. There is an apparent difference in the total ton mileage for the year 1900, the amount being reported in two different places as 10,171,001 and 10,367,518. The latter figure has been used in this analysis.

#### Through ton mileage, system.

1897 shows a gain over 1896 of 3.35 per cent. ; 1898, a gain over 1897 of 9.88 per cent. ; 1899 a gain over 1898 of 18.72 per cent. ; 1900 a loss from 1899 of 7.43 per cent. ; 1901 a gain over 1900 of 12.35 per cent. ; and 1901 over 1896 a gain of 40.30 per cent., or an average annual increase of 8.06 per cent.

#### Local ton mileage, system.

1897 shows a gain over 1896 of 3.90 per cent. ; 1898 over 1897 of 7.20 per cent., 1899 a gain over 1898 of 15.34 per cent. ; 1900 over 1899 of 14.78 per cent. ; 1901 a loss from 1900 of 4.50 per cent. and 1901 over 1896 a gain of 40.80 per cent., or an average annual increase of 8.16 per cent.

#### Total ton mileage, system.

1897 shows a gain over 1896 of 3.62 per cent. ; 1898 shows a gain over 1897 of 8.60 per cent. ; 1899 a gain over 1898 of 17.12 per cent. ; 1900 over 1899 a gain of 2.85 per cent. ; 1901 over 1900 a gain of 3.67 per cent. ; 1901 over 1896 a gain of 40.60 per cent., or an average annual increase of 8.12 per cent.

## Through ton haul, system.

These distances are shown for the years 1896 to 1901 inclusive as 426 miles; 427 miles; 441 miles; 443 miles; 461 miles and 449 miles. As an inspection will show, there was a gradual gain in haul up to and including 1900. The ton haul in 1901 was about 12 miles less than in 1900, and 23 miles more than that of 1896, an increase over the whole year of about 5.4 per cent., or an average annual increase of 1.08 per cent.

## Local ton haul, system.

The distances for the years 1896 and 1901 inclusive are as follows: 129 miles; 127 miles; 118 miles; 118 miles; 125 miles and 115 miles. This mileage shows a decrease in 1901 from 1896 of 14 miles, or loss of 10.8 per cent., an average annual decrease of 2.16 per cent.

## All freight to haul, system.

The lengths of this average haul for the years in question are as follows: 199 miles; 201 miles; 191 miles; 195 miles; 193 miles and 189 miles. This shows a falling off in 1901, as compared with 1896, of a total decrease of 5.02 per cent, an average annual decrease of about 1 per cent.

## 925 Average amount for ton haul, system.

These amounts show as follows: \$1.29- \$1.24- \$1.15- \$1.10- \$1.15 and \$1.17. The amount reached its lowest point in 1899, when the average was \$1.10 and in 1901 had risen to \$1.17. The amount in 1901 was, however, 12 cts. less than that in 1896, a loss of 9.32 per cent., or an average annual decrease of \$1.86 per cent. These average amounts per ton haul should be compared carefully with the total freight tonnage for the corresponding years, as shown above.

## Receipts per ton mile, system.

The through freight rates for the years 1896 to 1901 inclusive are as follows: .00505- .00484- .00463- .00420- .00437 and .00471. This rate seems to have fallen to its lowest point, .00420, in the year 1899. It then rose in 1901 to .00471, at which point it was .00044 below the rate of 1896, or a decrease of 8.56 per cent., an average annual loss in the rate of 1.71 per cent. This change in the rate, as well as the rate for each succeeding year, should be carefully compared with the ton mileage of through freight as shown above.

The rates for local freight for each of the years in question were as follows: .00768- .00762- .00728- .00713- .00737 and .00762. The low point in this rate, as in the one of through freight just mentioned seems to have been in 1899, when it fell to .00713. The rate then rose to .00762 in 1901, which figure is but 0.78 per cent. below the rate in 1896. These rates should be carefully compared with the local ton mileage, as given above, for the corresponding years.

The rates for all freight for each of the years noted were as follows: .00636-.00616-.00517-.00562-.00592 and .00618. The low point was in 1899, when the rate was .00562 and then had risen to .00618 in 1901. The whole year shows a decrease of 2.85 per cent., as compared with 1896, an average decrease of 0.57 per cent. These rates should be compared with the total ton mileage shown above.

#### Through freight tons, Michigan :

1897 shows a gain over 1896 of 1.68 per cent.; 1898, a gain over 1897 of 9.06 per cent.; 1899 a gain over 1898 of 24.48 per cent.; 1900 a loss from 1899 of 4.41 per cent. 1901 a gain over 1900 of 16.55 per cent.; while 1901 shows a total increase over 1896 of 53.80, an average annual increase of 10.76 per cent.

#### Local freight tons, Michigan :

1897 shows a gain over 1896 of 8.64 per cent.; 1898 a gain over 1897 of 15.74 per cent.; 1899, a gain over 1898 of 15.67 per cent.; 1900 a gain over 1899 of 9.67 per cent.; 1901, a loss from 1900 of 1.61 per cent.; while 1901 shows a total increase over 1896 of 56.80, an average annual increase of 11.36 per cent.

#### Total freight tons, Michigan :

1897 shows a gain over 1896 of 5.16 per cent.; 1898 a gain over 1897 of 12.50 per cent.; 1899 over 1898, a gain of 19.82 per cent.; 1900, a gain over 1899 of 2.84 per cent.; 1901 a gain over 1900 of 6.58 per cent.; while 1901 shows a total increase over 1896 of 55.35 per cent., or an average annual increase of 11.07 per cent.

#### Through ton mileage, Michigan :

1897 shows an increase over 1896 of 1.08 per cent.; 1898 an increase over 1897 of 13.68 per cent.; 1899, an increase over 1898 of 21.71 per cent.; 1900, an increase over 1899 of 1.10 per cent.; 1901 an increase over 1900 of 6.90 per cent.; while the total increase of 1901 over 1896 is 51.35 per cent., an average annual increase of 10.27 per cent.

#### Local ton mileage, Michigan :

1897 shows a gain over 1896 of 5.04 per cent.; 1898 a gain over 1897 of 12.57 per cent.; 1899 over 1898 a gain of 22.65 per cent.; 1900 over 1899, a gain of 4.88 per cent.; 1901 a gain over 1900 of 7.38 per cent.; while 1901 shows a gain over 1896 of 63.35 per cent. or an average annual increase of 12.67 per cent.

#### Total ton mileage, Michigan :

1897 shows a gain over 1896 of 2.54 per cent.; 1898 a gain over 1897 of 13.25 per cent.; 1899 over 1898 of 22.15 per cent.; 1900 over 1899 of 2.54 per cent.; 1901 a gain over 1900 of 7.10 per cent.; while



the total increase from 1896 to 1901 has been 55.80 per cent., an average annual increase of 11.16 per cent.

#### Through ton haul, Michigan :

The respective distances for the years 1896 to 1901 inclusive are as follows: 148 miles; 147 miles; 153 miles; 150 miles; 158 miles and 145 miles. The highest point seems to have been reached in 1900 when the average haul was 158 miles, while the haul in 1901 is but 3 miles or 2.03 per cent. less than in 1896.

The distances for the respective years are 86 miles, 83 miles, 81 miles, 86 miles, 82 miles and 89 miles, the distance in 1901 being but 3 miles or 3½ per cent. greater than in 1896.

#### All freight ton haul, Michigan :

The distances from 1896 to 1901 inclusive are as follows: 117 miles; 114 miles; 114 miles; 117 miles; 116 miles and 117 miles. Comparatively little change is shown in the distances but they should be compared with the total tonnage as shown above.

#### Average amount for ton haul, Michigan :

These amounts for the successive years are as follows: \$.84- \$.80- \$.81- \$.78- \$.81 and \$.83. The amount for 1901 was but 1 c., or about 1.2 per cent. less than in 1896. The low point seems to have been reached at 78 c. in 1899. These amounts should be carefully compared with the total tonnage hauled for each of the corresponding years.

#### 927 Receipts per ton mile, Michigan :

The rates for through freight for each of the years are as follows: .00646- .00534- .00545- .00491- .00549 and .00551. The rate seems to have been lowest in 1899, when it was .00491, from which point it rose to .00551 in 1891, a total decrease of 14.7 per cent., or an average annual decrease of 2.94 per cent. These rates should be compared with the through ton mileage for Michigan as shown above.

The local rates are stated as follows: .00850- .00958- .00948- .00926- .00899 and .00928. The high point seems to have been reached in 1887, when the rate was .00958, and the low point in 1896, when the rate was .00850. The rate in 1901 is .00928 and is 9.18 per cent. higher than in 1896, an average increase of about 1.84 per cent.

The rates for all freight were as follows: .00721- .00707- .00710- .00667- .00697- .00711. The low point seems to have been reached in 1899, when the rate was .00667. The rate in 1901, .00711 is but 1.38 per cent. less than the highest in this series of years, .00721 in 1896. The average decrease per year would be .00276 per cent. These rates should be compared with the total ton mileage for Michigan as shown above.

928 The WITNESS: The object of this compilation is to find the natural increase or decrease in various features of operation. The following comparisons may be drawn from the compilations:

Increases of 1901 over 1896.

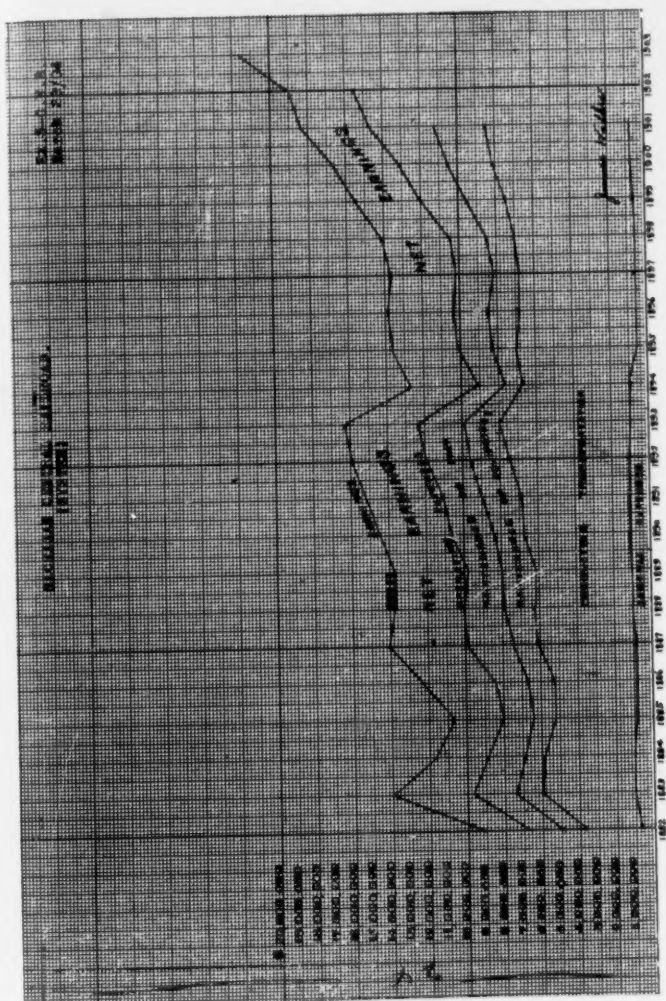
Character operation.	Part of road.	Increase in percentage. Per cent.	Average annual increase. Per cent.
Passenger train mileage .....	System .....	10.5	2.1
Passenger mileage .....	" .....	46.2	9.24
Passenger train mileage .....	Michigan .....	2.075	.0415
Passenger mileage .....	" .....	33.2	6.64
Freight train mileage .....	System .....	24.55	4.91
Total tonnage .....	" .....	51.6	10.32
Total ton mileage .....	" .....	40.6	8.12
Total train mileage .....	Michigan .....	28.6	5.72
Total tonnage .....	" .....	55.35	11.07
Total ton mileage .....	" .....	55.8	11.16

Though the rates per passenger and per ton mile for passengers and freight decreased from 1896 to 1901, the large increase in passengers and freight carried, shows a large increase in gross earnings.

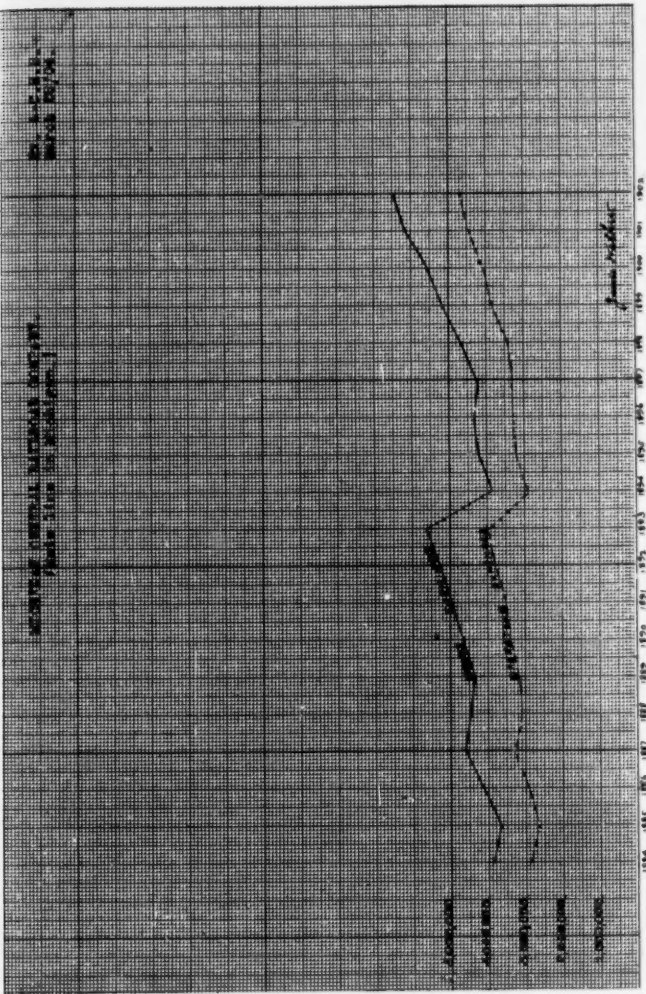
I have prepared charts to indicate the relation of the operating expenses to the gross earnings on the lines of the Michigan Central system, from 1882 to 1902, one each, for the main lines, for the entire system and for each constituent company. On each of these charts are two lines representing the gross earnings and the operating expenses. On the left is shown the scale of money and horizontally at the bottom, the scale of time. The chart for the system in addition represents the general expenses, cost of conducting, transportation, maintenance of equipment and of way, and structures. The figures are correctly taken from the companies' reports to the commissioner of railroads and correctly represent the reports from which taken.

The charts were offered in evidence subject to objection of incompetent and immaterial. They are as follows:

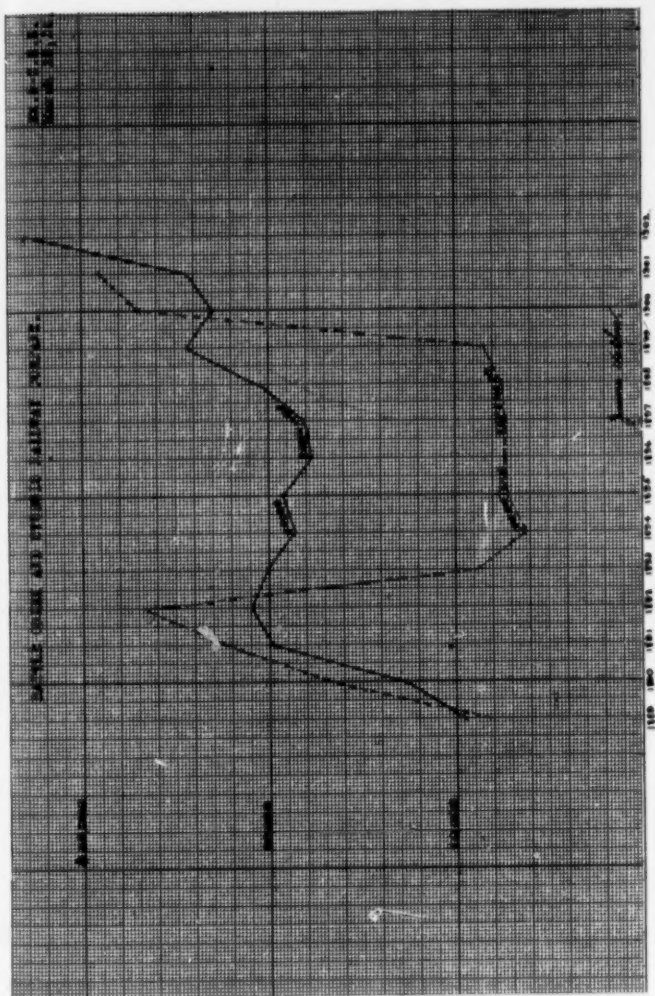
(Here follow diagrams marked pp. 929 to 941, incl.)







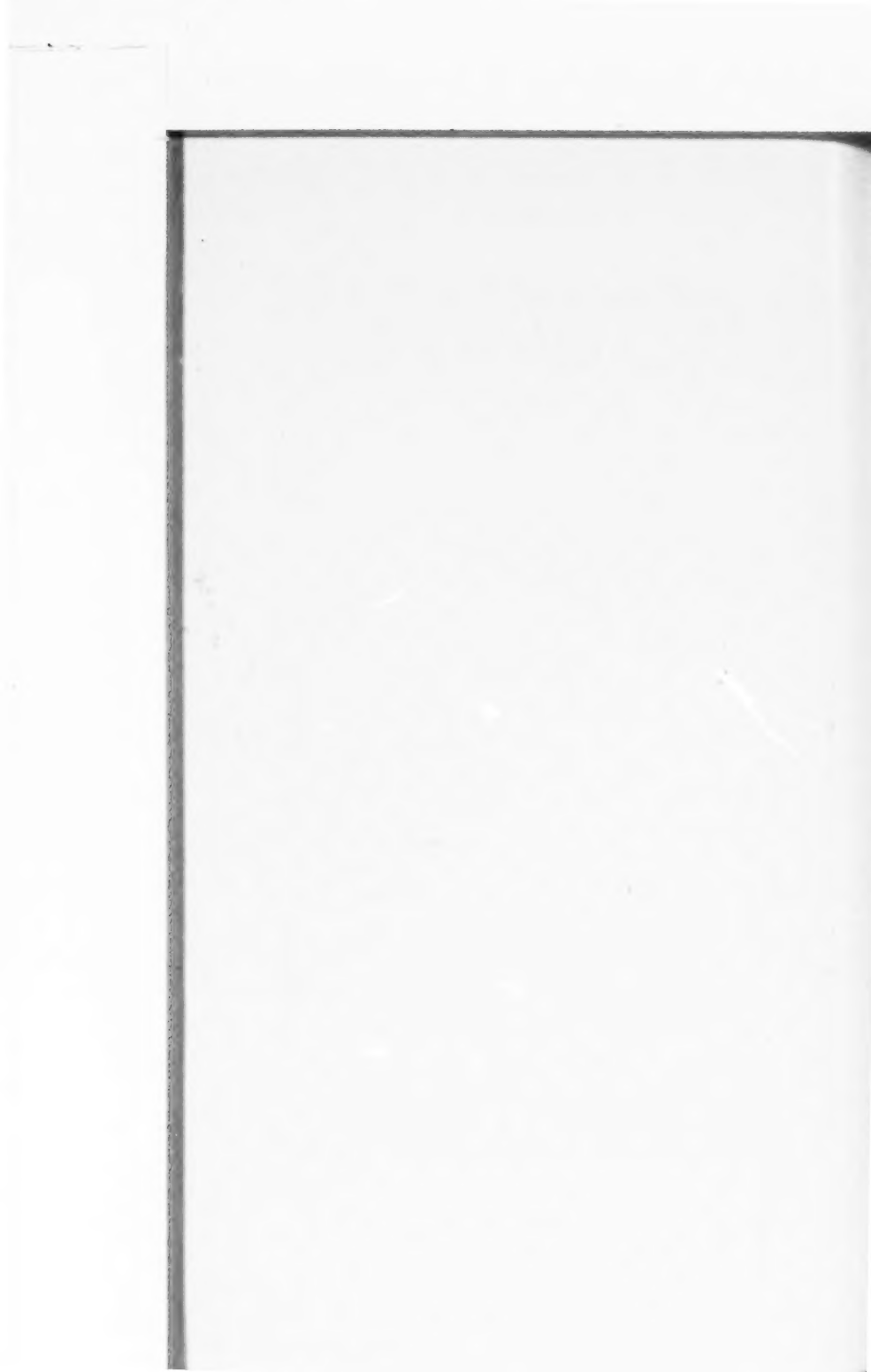


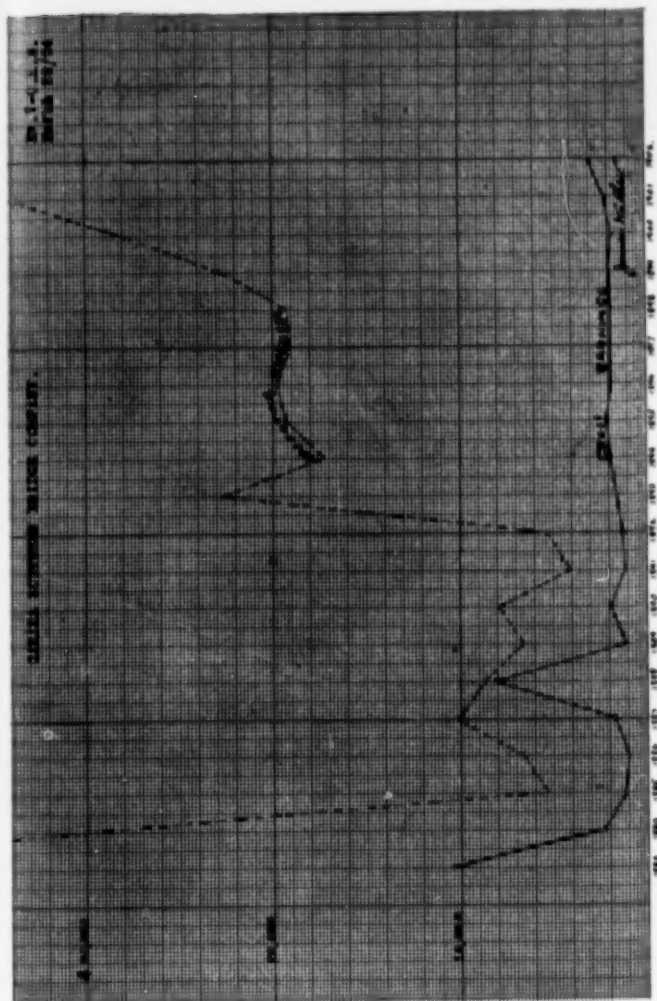




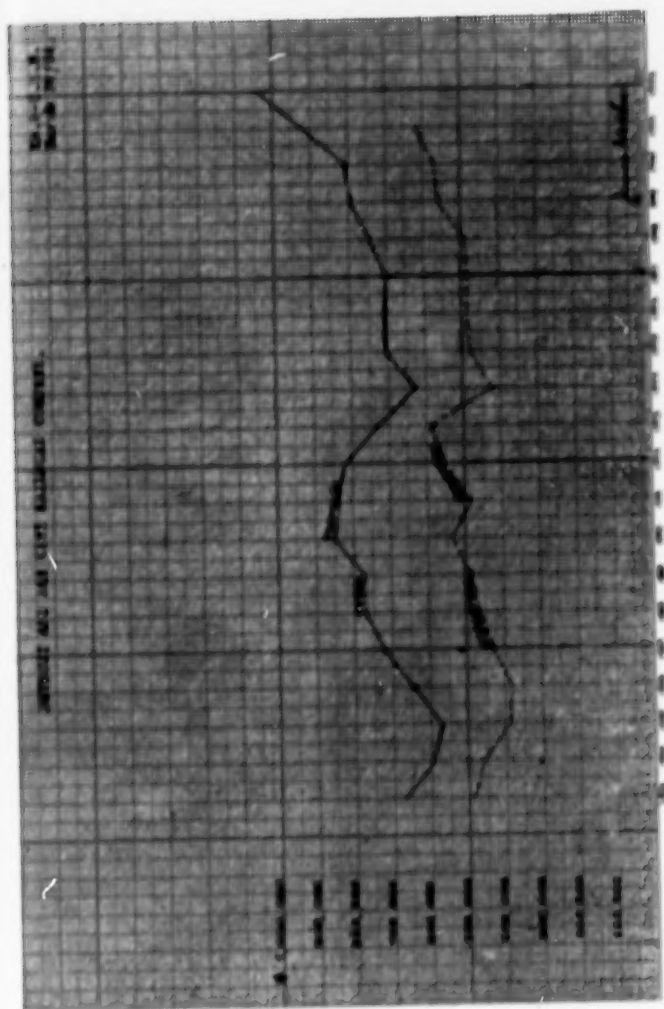






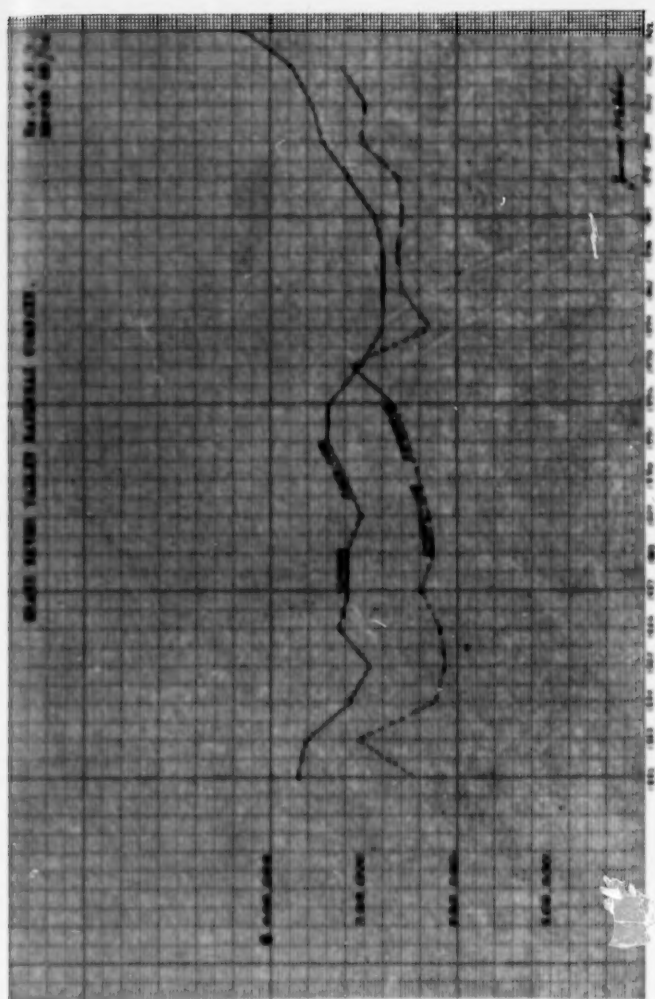






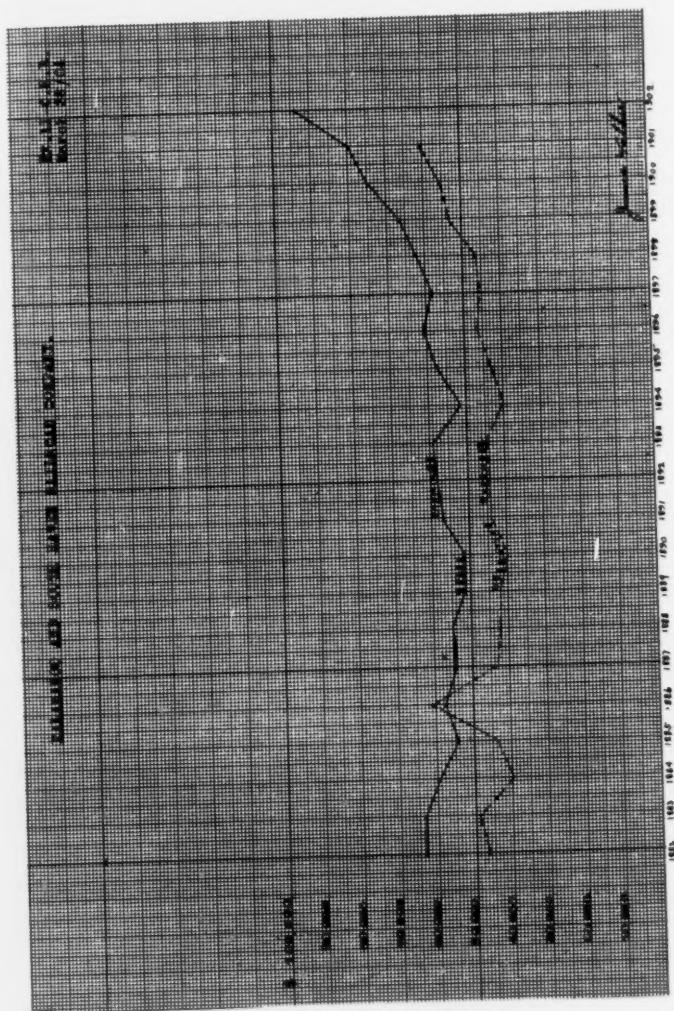


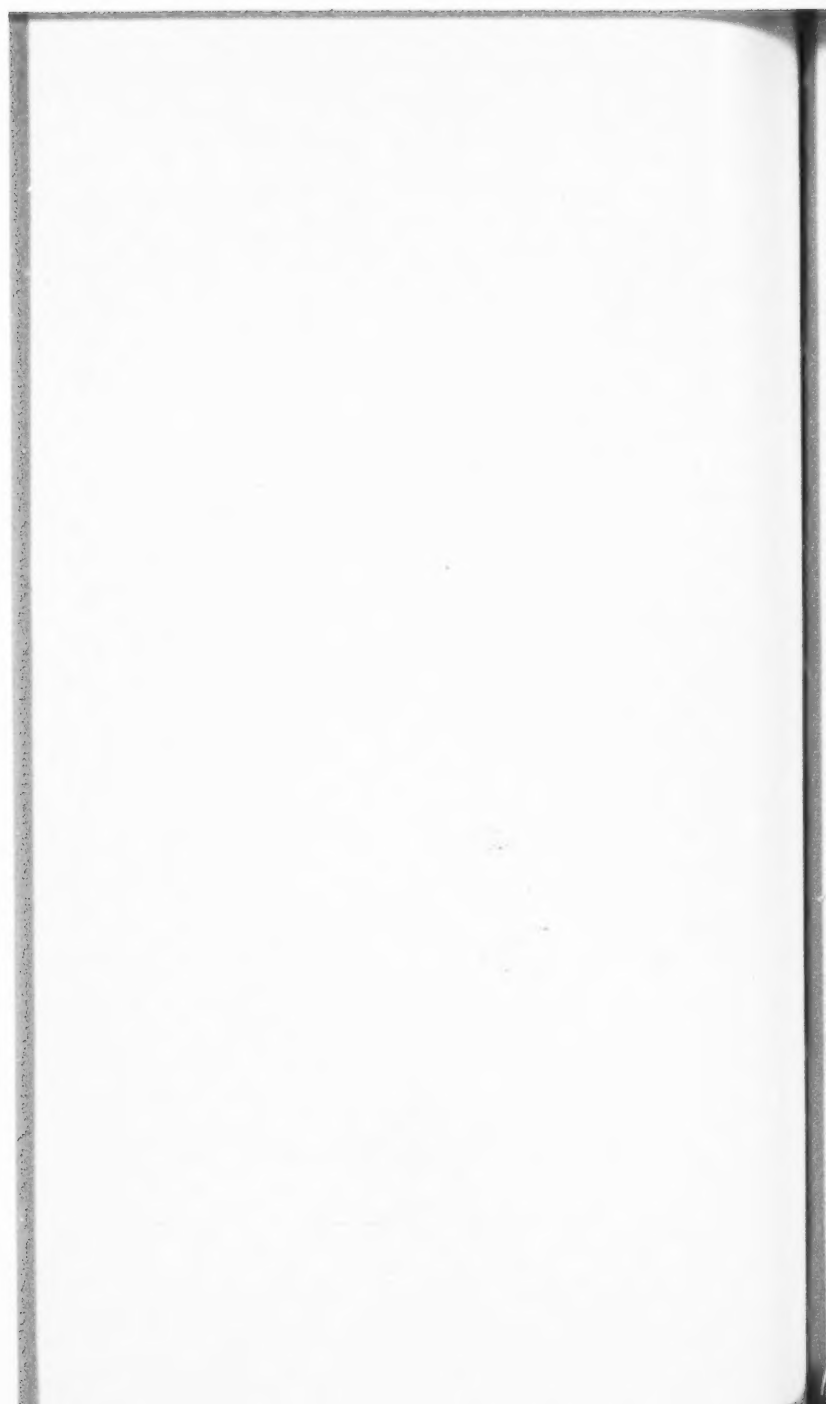


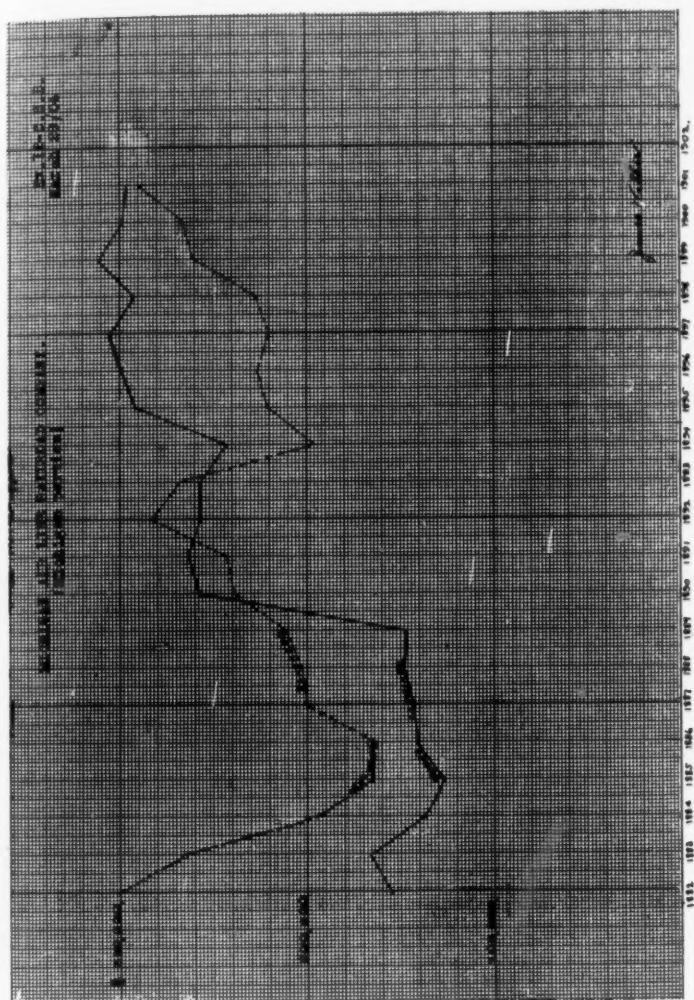






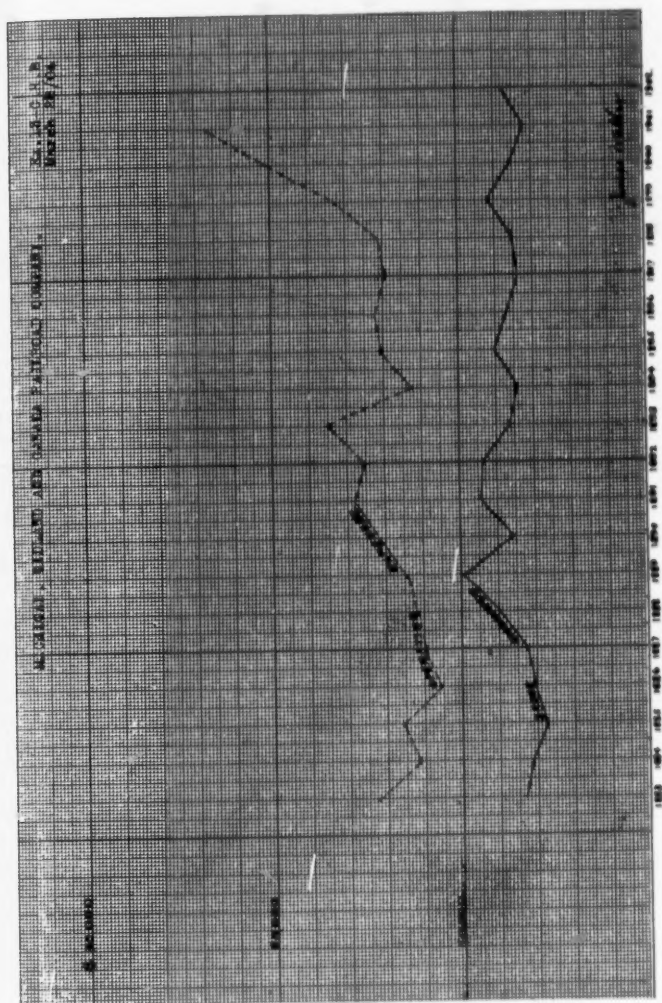




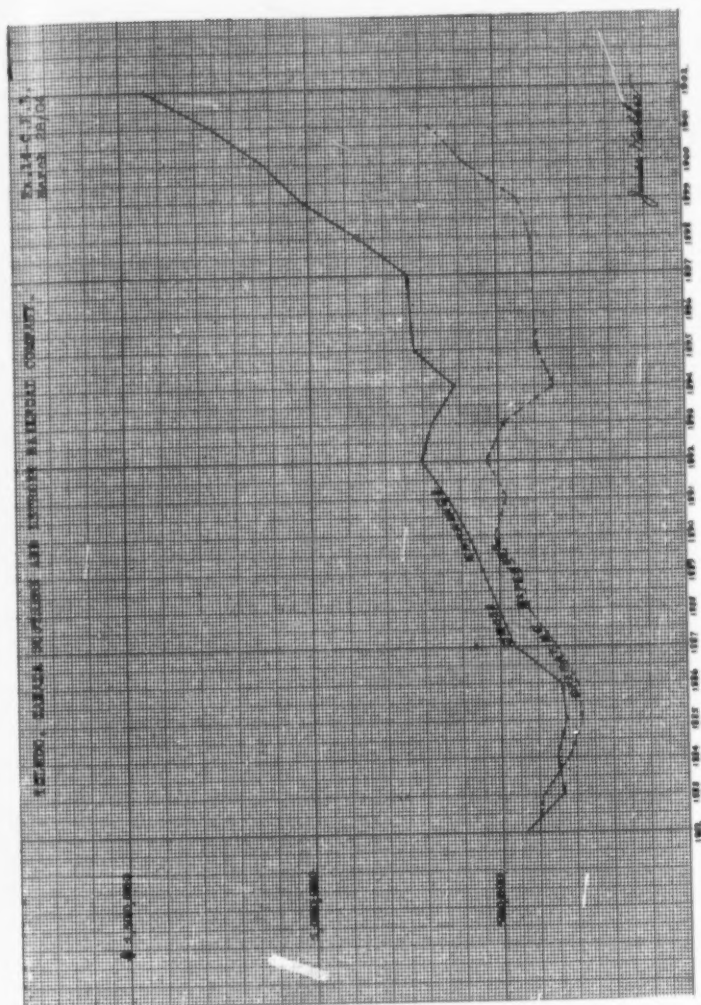


















942 The charts illustrate that the operating expenses are assigned arbitrarily and are out of proportion to the business done as evidenced by gross earnings. Because of this I have treated the earning power from the standpoint of the entire system.

(Witness details, from reports to railroad commissioner, gross earning, operating expenses exclusive of taxes, net earnings and taxes for system, also partial figures from report to board of assessors, year to June 30, 1902, as follows :

For the Years 1890 to 1902.

In 1890, gross earnings.....	\$14,543,858.59
Operating expenses .....	10,427,402.78
Net earnings.....	4,116,455.81
Taxes.....	304,351.29
1891, gross earnings.....	15,221,838.63
Operating expenses.....	10,797,720.49
Net earnings.....	4,424,118.14
Taxes.....	309,849.01
1892, gross earnings.....	15,957,024.20
Operating expenses.....	11,719,578.70
Net earnings.....	4,237,445.50
Taxes.....	326,515.91
1893, gross earnings.....	16,224,862.71
Operating expenses.....	11,946,917.23
Net earnings.....	4,277,945.48
Taxes.....	340,875.12
1894, gross earnings.....	12,628,663.
Operating expenses.....	8,803,463.55
Net earnings.....	3,825,199.45
Taxes.....	340,644.42
1895, gross earnings.....	13,700,497.94
Operating expenses.....	9,880,732.42
Net earnings.....	3,819,765.52
Taxes.....	302,498.89
1896, gross earnings.....	13,861,299.78
Operating expenses.....	10,065,896.91
Net earnings.....	3,795,402.87
Taxes.....	326,452.99
1897, gross earnings.....	13,741,858.81
Operating expenses.....	9,919,193.61
Net earnings.....	3,822,665.20
Taxes.....	330,316.71
1898, gross earnings.....	14,090,827.41
Operating expenses.....	10,137,873.50
Net earnings.....	3,952,953.91
Taxes.....	408,098.68
1899, gross earnings.....	15,552,760.72
Operating expenses.....	11,577,423.69
Net earnings.....	3,975,337.03



Taxes .....	426,693.02
1900, gross earnings.....	16,780,150.10
Operating expenses.....	12,762,284.58
Net earnings.....	4,017,865.52
Taxes .....	467,205.77
1901, gross earnings.....	18,564,936.85
Operating expenses .....	14,237,831.06
Net earnings.....	4,327,105.79
Taxes .....	508,132.90
1902, gross earnings .....	19,106,255.86
Operating expenses.....	14,918,442.22
Net earnings.....	4,187,813.64
Taxes .....	549,062.33
In Exhibit 8, Feb. 19th, 1904, the report of the Michigan Central Railroad Company to the State board of assessors, page 39, the gross earnings	
944 for the year ending June 30th, 1902, is shown as .....	\$18,763,890.48
Operating expenses.....	14,435,896.65
Net earnings.....	4,327,993.83
Taxes .....	531,352.90

Attention is called to the increased ratio between the operating expenses and gross earnings from 1896 to 1902, due largely to the increase in construction and equipment carried to the operating account.

Exhibit 8, Feb. 19, 1904, (pp. 35, 37), the report to the State board of assessors for 1902, shows permanent improvements in operating expenses of \$1,383,939.22. That the company has charged permanent improvements into operating expense and income and maintained its interest and dividends is proof of strength and security of its operation and confidence in its ability to protect net earnings.

In referring to the reports of the railroad commissioner of Michigan for the gross earnings, operating expenses, net earnings and taxes of this company's property reported to the State of Michigan for the years 1890 to 1902, we find the statistics as follows:

945 In 1890—gross earnings.....	\$8,425,357.81
Operating expenses (exclusive of taxes).....	6,328,828.94
Net earnings.....	2,096,528.87
Taxes.....	224,971.93
In 1891—gross earnings.....	8,814,776.68
Operating expenses.....	6,384,066.54
Net earnings.....	2,430,710.14
Taxes.....	229,107.98
In 1892—gross earnings.....	9,079,235.94
Operating expenses.....	6,882,818.41
Net.....	2,196,417.53
Taxes.....	238,991.60

In 1893—gross earnings.....	9,179,245.19
Operating expenses.....	7,091,011.82
Net.....	2,088,233.37
Taxes.....	237,504.99
In 1894—gross earnings.....	7,002,157.23
Operating expenses.....	5,104,816.37
Net.....	1,897,340.86
Taxes.....	229,147.27
In 1895—gross earnings.....	7,583,053.98
Operating expenses.....	5,820,826.49
Net.....	1,762,227.49
Taxes.....	206,351.22
In 1896—gross earnings.....	7,540,683.41
Operating expenses.....	5,923,715.73
Net.....	1,616,967.68
Taxes.....	228,218.91
In 1897—gross earnings.....	7,439,389.37
Operating expenses.....	5,895,542.74
Net.....	1,543,846.63
Taxes.....	221,078.81
In 1898—gross earnings.....	8,165,522.15
Operating expenses.....	6,002,898.08
Net.....	2,162,684.07
Taxes.....	289,367.62
In 1899—gross earnings.....	9,216,054.51
Operating expenses.....	6,788,677.97
Net.....	2,427,376.54
Taxes.....	320,488.81
In 1900—gross earnings.....	9,910,322.57
Operating expenses.....	7,217,826.97
Net.....	2,692,495.60
Taxes.....	367,908.44
In 1901—gross earnings.....	10,890,069.62
Operating expenses.....	7,915,319.83
Net.....	2,974,749.79
Taxes.....	400,613.45
In 1902—gross earnings.....	11,718,301.25
Operating expenses.....	8,392,077.66
Net.....	3,326,223.59
Taxes.....	443,932.02

946 In a statement attached to the report, to board of assessors for 1902, the Michigan gross earnings of the Michigan Central are given as \$11,227,926.78; comparing with the earnings for the entire system, 1890 to 1902, at no time did the Michigan proportion exceed 61.3 per cent.; Michigan's proportion of the mileage (p. 12, Ex. 8, Feb. 19, 1904) is 68.65 per cent.; the gross earnings assigned to Michigan varied from 54.1 per cent. in 1897 to 61.3 per cent. in 1902; the net earnings credited to Michigan ranged from 51 to 80

per cent., the relatively high proportion of Michigan net earnings may result from the fact that an operating ratio of 90 per cent. is shown to the Dominion of Canada, for the year to June 30, 1902.

The operation ratio (exclusive of taxes) was :

	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902
System. ....	71.8	71.0	73.5	73.5	69.7	72.1	72.3	72.2	71.8	74.4	76.1	76.9	78.1
Michigan. ....	75.1	72.4	75.9	77.3	73.0	76.9	78.6	79.2	73.5	74.5	73.0	72.8	71.8

The company's income account, (June 30, 1902) indicates it was able after including \$1,383,939.22 of permanent improvements in its operating account; to charge against net income for improvements \$210,000, pay interest and dividends and carry to surplus \$141,646.21.

Deducting the \$1,383,939.22 for permanent improvements would give ratio of 69.5 instead of 76.9 per cent. Improvements charged against net income were in 1899, \$70,000; 1900, \$65,000; 1901, \$80,000.

As the result of figures, indicating the fact that the Michigan Central ratio of operating expenses in Michigan for 1902 to be less than 70 per cent., had not improvements been included in operating expenses, and for reasons indicated by curves (Ex. s, March 28, 1904) I have used, in determining average net earnings, an operating ratio of 70 per cent.

In capitalizing, I take as an average of the gross earnings 947 of the system from 1897 to 1901 inclusive \$15,746,107; using operating ratio of 70 per cent. gives net earnings of \$4,723,832; capitalizing them at 5.65 per cent. gives \$83,600,000; applying the track mileage percentage of 68.56 per cent. gives \$57,300,000; applying same process for 1898 to 1902, inclusive gives for system \$89,300,000; for Michigan, \$61,200,000. (Under objection of incompetent and irrelevant) Taking the year 1902, would give for the system \$102,250,000; and for Michigan \$70,102,600.

The 5.65 per cent. used for capitalization is the net market rate for money in quantities in railroad business, plus the tax rate of 1.65 per cent. The rate of capitalization depends on,—1st, market rate for money in the business under consideration; 2nd, the rate of taxation; 3rd, the security. The rate of 4 per cent. of Michigan Central is possibly high.

The earnings of the system in Michigan, based on a 10 year average, including 1900, used by Prof. Adams in 1900, were \$8,247,590; those reported to board of assessors in 1902, were \$[11]\*, 227,927.

All this has influenced my judgment in arriving at an estimate of Michigan Central's property in Michigan. My opinion of its value in 1902, is the same as that recommended to the board of assessors—\$57,000,000.

[\* Figures enclosed in brackets erased in copy.]

This reduced by local real estate in amount \$748,000 is \$56,252,000. I made a similar valuation of the Pere Marquette system, which I fixed at \$37,000,000, being the amount recommended to the board of assessors.

This reduced by the local real estate, (which by capitalization of the tax, \$12,096.34, equals \$730,000) leaves \$36,270,000. One consideration influencing my valuation is that the property has been organized as a consolidated company only since 1899.

The trackage since 1900 increased 162 miles; permanent improvements charged to construction and equipment accounts were \$2,100,684.35; funded debt was increased; and considerable new equipment was added. The physical value by Mr. Cooley in 1902 was \$34,798,973.

948 (The witness makes a detailed statement, *re* Pere Marquette of mileage, total and Michigan tonnage, passenger traffic and mileage, earnings and operating expenses.)

The operating ratio for three years beginning with 1900 was 73.15, 74.21, and 74.93 per cent. This has been accepted as the bulk of permanent improvements are charged to capital account and not to operating expenses.

I have capitalized the net earnings for calendar years, exclusive of taxes, at 5.65 per cent.

Year.	Net earnings.		Year.	Net earnings.	
1898	\$1,790,275	Equals \$31,600,000	1901	\$2,373,135	Equals \$42,000,000
1899	1,924,521	Equals 34,000,000	1902	2,834,507	Equals 50,000,000
1900	2,227,411	Equals 39,400,000	1902	2,497,290.64 <sup>a</sup>	Equals 44,000,000

NOTE 3.—From report to board of assessors.

The value I fixed at \$37,000,000 because the property was new and undeveloped in 1902 and I could not judge of its permanency.

Under objection of incompetent and irrelevant.

Had I had knowledge of its permanency as a system and that it would establish advantageous connections, the value would have been more. I limited my considerations to April, 1902. If the conditions coming into existence between 1902 and the present, could have been anticipated in 1902, they would have induced a higher value. Unless the property not used in the operation of road participates in the earnings, deduction of its value should not be made after the capitalization of earnings.

Exhibit 7, Feb. 19, 1904, the report to the board of assessors, (p. 36) states "the title to real estate amounting to \$121,570.71" is taxed locally. Deducting that amount would reach approximately \$36,879,000.

I have made a computation of taxes paid by railroad companies on local real estate. The taxes are as follows:

949	Ann Arbor.....	\$1,176 08
	Chicago, Milwaukee & St. Paul.....	300 93
	Chicago & North Western.....	7,090 62†
	Cincinnati, Saginaw & Mackinaw.....	124 10
	Detroit & Mackinac.....	521 76
	Detroit, Grand Haven & Milwaukee.....	415 64
	Duluth, South Shore & Atlantic.....	1,083 46
	Grand Rapids & Indiana.....	491 57
	Muskegon, Grand Rapids & Indiana.....	35 82
	Grand Trunk Western.....	8,316 09
	Chicago, Detroit & Canada Grand Trunk Junction....	358 84
	Michigan Air Line railway.....	52 83
	St. Clair Tunnel Co.....	420 73
	Toledo, Saginaw & Muskegon.....	52 23
	Lake Shore & Michigan Southern.....	781 04
	Marquette & Southern.....	142 96†
	Michigan Central.....	12,395 98†
	Mineral Range.....	124 19
	Munising.....	4,678 66
	Pere Marquette.....	12,096 34§
	Wisconsin & Michigan.....	73 10

\* From report board of assessors, 1902.

† From report local assessors.

‡ From statements by Messrs. Russel and Butterfield before board of assessors on review.

§ Probably includes taxes for other purposes, also.

Under objection of incompetent and irrelevant, based on statement not of record in case and irrelevant if offered.

The difference of \$10,500,000 on the Michigan Central and \$11,500,000 on the Pere Marquette between the valuations by the board of assessors in 1902 and 1903, is not accounted for by any increase in the value of the property between the assessments.

Under objection of incompetent and irrelevant.

When the 1902 assessment was made the board had before it the result of Cooley-Adams' appraisal, the figures of which were, Michigan Central physical value, \$35,463,517, total value, \$49,633,417; Pere Marquette, physical value, \$28,300,084, total value, \$31,734,584.

Under objection of irrelevant, hearsay and not the best evidence.

In 1902, the board's valuation of the Michigan railroad properties was \$198,641,000 after, and \$208,212,500 before, review. The Cooley-Adams' aggregate on the same roads was about \$202,500,000.

950 Under objection of incompetent and irrelevant.

The board in fixing valuations made computations based on the earning power and the stocks and bonds of the several railroads and the results as applied to the Pere Marquette and the Michigan Central are more than final assessment. The board had before it my recommendation in substantially the figures testified to here; with all this before it, it reached preliminary values of these properties. (Book produced.) This book contains a record of that preliminary estimate.

Under objection of incompetent and irrelevant.

I was present at the board's meetings to consider the value of railroad property; this book is a record of the result of those meetings. The figures indicating the first estimate of the valuation of each road were observed by each member as they were recorded in the book.

Under objection of incompetent and irrelevant.

I was present at one meeting of the board subsequent to placing the figures on this book.

Witness reads from the book labelled, "Official preliminary list of values," as follows:

Ann Arbor railroad.....	\$8,332,000
Arcadia & Betsey River.....	75,000
Au Sable & Northwestern.....	350,000
Boyer City & Southeastern.....	320,000
Chicago, Detroit & Canada Grand Trunk Junction.....	2,195,000
Grand Trunk Western.....	13,000,000
Chicago, Kalamazoo & Saginaw.....	600,000
Chicago, Milwaukee & St. Paul.....	5,500,000
Chicago & Northwestern.....	20,500,000
Cincinnati Northern.....	350,000
Cincinnati, Saginaw & Mackinaw.....	865,500
Cleveland, Cincinnati, Chicago & St. Louis.....	1,855,000
Copper Range.....	2,400,000
Detroit, Grand Haven & Milwaukee.....	5,650,000
Detroit, Toledo & Milwaukee.....	1,800,000
Detroit Southern.....	950,000
Detroit & Mackinaw.....	5,500,000
Duluth, South Shore & Atlantic.....	16,700,000
Pere Marquette.....	38,000,000
Gogebic & Montreal River.....	550,000
Grand Rapids & Indiana system.....	12,500,000
Lake Shore & Michigan Southern system.....	55,000,000
Manistee & Grand Rapids.....	700,000
Manistee & Northeastern.....	1,500,000
Manistique.....	570,000
Manistique & Northwestern.....	800,000
Mason & Oceana.....	150,000



Michigan Air Line railway.....	700,000
Michigan Central system.....	60,000,000
Milwaukee, Benton Harbor & Columbus.....	300,000
Mineral Range.....	3,000,000
Minneapolis, St. Paul & Sault Ste. Marie.....	4,500,000
Munising .....	700,000
Pontiac, Oxford & Northern.....	1,400,000
Sault Ste. Marie Bridge Company.....	425,000
South Haven & Eastern.....	300,000
St. Clair Tunnel Company.....	1,575,000
St. Joseph, South Bend & Southern.....	400,000
Toledo, Saginaw & Muskegon.....	650,000
Wisconsin & Michigan.....	225,000
Wabash .....	3,500,000
Detroit Union Railroad Depot and Station Company...	2,013,540
Fort Street Union Depot Company.....	2,250,000
Bear Lake & Eastern.....	50,000
Crawford & Manistee River.....	37,000
Hecla & Torch Lake.....	1,025,000
Lake Superior & Ishpeming.....	1,518,000
Lewiston & Southeastern.....	48,000
Manistee & Luther.....	175,000
Quincy & Torch Lake.....	390,000
Toledo & Monroe.....	375,000
Escanaba & Lake Superior.....	1,125,000
Detroit & Charlevoix.....	450,000

The total being..... \$273,843,040

951 At this time the investigation of the Lake Shore was meager and valuation appearing represents the track mileage proportion of tentative value placed on the entire system;—the meaning of section eight of act 173, being in doubt.

Under objection of incompetent and irrelevant.

Messrs. Freeman and Sayre were anxious to crowd down the valuation of certain railroads; Sayre, that of the Pere Marquette and Freeman that of the Michigan Central. The final values of those systems were materially below those first determined upon.

Under objection of incompetent and irrelevant.

Messrs. Freeman and Sayre evinced more anxiety about reaching low values for the Pere Marquette and the Michigan Central than about any other railroads.

Under objection of incompetent and irrelevant.

Their valuations on those properties seemed fixed in advance; Mr. Sayre's figure for the Pere Marquette was below \$25,000,000; and Mr. Freeman's for the Michigan Central was about \$42,000,000.

Under objection of incompetent and irrelevant.



During entire assessment there was an effort by Freeman and Sayre to secure assessment of those properties at or near the figures mentioned. Mr. Freeman stated in my presence that the power of these great corporations could not be neglected.

Under objection of incompetent and irrelevant.

An article appeared in the Detroit Free Press picturing Mr. Sayre as the low valuer on the board. I was subsequently charged by Freeman and Sayre with having given the interview. They told me if I had, they would take my head off. And I told them if I told all I knew a great many people would not be resting as well as they were. They then shook hands with me and said they would let the matter drop.

952 Under objection of incompetent and irrelevant.

Mr. Sayre appeared very angry when he talked with me. After I made the statement that if I told all I knew a great many people would not be resting as well as they were, Mr. Freeman said : "We ought not to blame this man for the appearance in public of all the statements with reference to the board since so much has been printed." Mr. Sayre said, "I am content to let this matter drop right here."

#### Cross-examination :

The tentative figures spoken of, aggregating \$273,000,000 included only railroad companies and a union depot company. They are in my handwriting in the book read from.

This is the only authentic record and is part of the files of the board of assessors. It is a collection of summary sheets, giving the cost of reproduction, Cooley's present value and Adams' non-physical value of each road.

The figures were put on it in the presence of the board in session. I had previously made computation of Michigan Central property, but had not fully worked out the plan as described today, nor reached a judgment of a proper valuation.

The \$60,000,000 on Michigan Central was result of the combined opinion of the members of the board ; not reached on my suggestion, but approximated closely my suggestion made after mature deliberation. I made recommendations as to every road before these tentative figures were made up. They do not in all cases approximate my recommendation.

The board or members gave consideration to the stock and bond plan, capitalization of earnings, and appraisals supplemented by capitalization of net corporate surplus. They considered many different plans and the results of the different plans, the history of the different properties and other considerations, which had  
953 a bearing on the proper valuation, were placed before the board.

The calculations resulting in figures prior to assessment in 1902, were not principally made by me. Each commissioner made figures. The facts were principally adduced by me and information on specific points was taken by me from reports in the presence of the board.

I made no computation which led to placing a valuation of 55 millions on the Lake Shore. The question of the meaning of section eight, act 173, was the subject of discussion before the 55 million dollars was fixed for Lake Shore and continued afterwards. I think some of the figures were made the subject of a vote; no record was kept.

These figures were amended before the final roll was signed. This list was completed about Dec. 11th, and the roll was signed on Saturday, the 13th, within two days of the time the tentative list was prepared. Whatever amendments were made were between December 11th and 13th.

In arriving at the percentage for capitalization on the Michigan Central and Pere Marquette I was influenced by the maintenance account in the reports from year to year. I was influenced in Pere Marquette by the fact that high renewals were not kept up.

I made allowance for the fact that the company had been increasing its operating account since its organization. I examined the maintenance account. Used the same percentage on the Michigan Central and Pere Marquette; made allowance for the difference in the systems in the operating account, assuming a 70 per cent. ratio on the Michigan Central.

Only a few of the considerations leading to adoption of 70 per cent. are stated in testimony. In addition to those, the Michigan Central is better than the average road in the United States; better kept up and operated; the average gross earnings in U.S. 954 are \$7,000 a mile; on Michigan Central they are \$11,000; the average operating expense for all roads in the U. S. between 64 and 65 per cent. in the year named.

In the figures presented to the board in 1902 I made computation on ten and five year averages; didn't recommend the adoption of either; I haven't used any period to be guided entirely by it. The average is higher using five years instead of ten; and also below present earnings. Before you could reach a conclusion you should know what the figures were for ten years.

I have been influenced by figures for twenty, ten, five and three years, and present earnings. I do not consider my system better than any other suggested in this case; there are others equally as good. My method involves the application of all possible methods and rules that can be applied.

With proper application, all methods suggested in this case would produce as correct results as mine. I don't say where we differ in results the other methods are improperly applied; the different results are from a difference in judgment. So far as my judgment

and Prof. Adams' were influenced by the same considerations, I do not think we differed.

The valuation I make is that finally arrived at in my work for the board of assessors, based on facts and information obtainable at the time when the future with reference to the Pere Marquette especially was a mere guess. During the two years of active operations since, the guesses of 1902 have become realities or unrealities.

If I were to fix the value on these properties as of April 14, 1902, based on what I have learned since 1902, I would amend the figures given here. In valuing the properties I have placed myself in 1902 and used only the information then available, with the same guesses as to the future by a study of the past used then.

#### 954a Railroad Assessment of 1903.

Mr. WYKES: I produce the assessment roll of the State board of assessors for the year 1903, and offer the same in evidence.

Mr. BUTTERFIELD: We object to it as incompetent and irrelevant.

Mr. WYKES: I read from the roll the names of the railroad companies assessed and the values placed upon them after review or the values as reviewed.

Ann Arbor Railroad Company.....	\$7,600,000.
Arcadia & Betsey River Railway Company.....	75,000.
Au Sable & Northwestern Railroad Company.....	150,000.
Boyer City & Southeastern Railroad Company.....	292,000.
Chicago, Kalamazoo & Saginaw Railway Company...	510,000.
Chicago, Milwaukee & St. Paul Railway Company.....	3,650,000.
Chicago & Northwestern Railway Company.....	14,000,000.
Cincinnati Northern Railroad Company.....	425,000.
Cleveland, Cincinnati, Chicago & St. Louis Railway Company, operating Cincinnati, Wabash and Michi- gan Railway Company.....	1,000,000.
Copper Range Railway Company.....	2,800,000.
Crawford & Manistee River Railway Company.....	20,000.
Detroit & Charlevoix Railroad Company.....	450,000.
Detroit & Mackinaw Railway Company.....	4,100,000.
Detroit Southern Railroad Company.....	800,000.
Detroit, Toledo & Milwaukee Railroad Company.....	1,500,000.
Detroit & Toledo Shore Line Railroad Company.....	200,000.
Detroit Union Depot & Station Company.....	1,600,000.
Duluth, South Shore & Atlantic Railway Company....	11,000,000.
East Jordan & Southern Railroad Company.....	200,000.
Escanaba & Lake Superior Railroad Company.....	1,200,000.
Fort Street Union Depot Company.....	1,900,000.
Grand Rapids & Indiana Railway Company.....	11,000,000.
Muskegon, Grand Rapids & Indiana Railway Com- pany.....	750,000.

Traverse City Railroad Company.....	250,000.
Grand Trunk Western Railroad Company.....	13,000,000.
954b Chicago, Detroit & Canada Grand Trunk Junction.....	1,650,000.
Cincinnati, Saginaw & Mackinaw Railroad Company leased to the Grand Trunk Railroad Company of Canada .....	750,000.
Detroit, Grand Haven & Milwaukee Railway Company.....	5,900,000.
Michigan Air Line railway, leased to the Grand Trunk Railway Company of Canada.....	550,000.
St. Clair Tunnel Company.....	1,575,000.
Toledo, Saginaw & Muskegon Railway Company.....	650,000.
Hecla Belt Line Railroad Company.....	40,000.
Hecla & Torch Lake Railroad Company.....	350,000.
Huron & Western Railroad Company.....	50,000.
Lake Shore & Michigan Southern Railroad Company .....	8,750,000.
Detroit & Chicago Railroad Company.....	230,000.
Detroit, Hillsdale & Southwestern Railway Company..	700,000.
Detroit, Monroe & Toledo Railroad Company.....	3,720,000.
Fort Wayne & Jackson Railroad Company.....	600,000.
Kalamazoo, Allegan & Grand Rapids Railroad Company.....	1,200,000.
Kalamazoo & White Pigeon Company.....	800,000.
Northern Central Michigan Company.....	900,000.
Sturgis, Goshen & St. Louis Railroad Company.....	100,000.
Lake Superior & Ishpeming Railroad Company.....	1,400,000.
Lewiston & Southeastern Railroad Company.....	30,000.
Manistee & Grand Rapids Railroad Company.....	500,000.
Manistee & Luther Railroad Company... ..	150,000.
954c Manistee & Northeastern Railroad Company....	1,500,000.
Manistique, Marquette & Northern Railroad Co .....	750,000.
Manistique Railway Company.....	250,000.
Marquette & Southeastern Railroad Company.....	450,000.
Mason & Oceana Railroad Company.....	75,000.
Michigan Suburban.....	125,000.
Minneapolis, St. Paul & Sault Ste. Marie Railroad Company .....	5,500,000.
Mineral Range Railroad Company, and Hancock & Calumet Railroad Company.....	1,800,000.
Munising Railway Company.....	650,000.
Michigan Central Railroad Company.....	32,175,000.
Battle Creek & Sturgis Railroad Company.....	290,000.
Bay City & Battle Creek Railroad Company.....	150,000.
The Buchanan & St. Joseph River railroad.....	10,000.
Canada Southern Bridge Company.....	300,000.
The Detroit & Bay City Railroad Company.....	4,500,000.

Detroit, Delray & Dearborn Railroad Company.....	50,000.
Detroit Manufacturers Railroad Company.....	100,000.
Grand River Valley Railroad Company.....	2,000,000.
Jackson, Lansing & Saginaw Railroad Company.....	6,000,000.
The Kalamazoo & South Haven Railroad Company...	325,000.
Michigan Air Line Railroad Company.....	2,000,000.
The Michigan, Midland & Canada Railroad Com- pany.....	100,000.
Toledo, Canada Southern & Detroit Railway Co.....	7,500,000.
North Park Bridge Company.....	50,000.
Onaway & North Michigan Railroad Company.....	18,000.
Pere Marquette Railroad Company, operating the prop- erty of eight following companies :	
954d Bay City Belt Line Railroad Company, Benton Harbor, Coloma & Paw Paw Lake Train Railway Company, Grand Rapids, Belding & Saginaw Railroad Com- pany, Grand Rapids, Kalkaska & Southeastern Railroad Company, Milwaukee, Benton Harbor & Columbus Railroad Company, Saginaw, Tuscola & Huron Railroad Company, Sault Ste. Marie Railroad Company, South Haven & Eastern Railroad Company,	
Valuation .....	37,500,000.
Pontiac, Oxford & Northern Railroad Company.....	1,000,000.
Port Huron & Southeastern Railway Company.....	30,000.
Quincy & Torch Lake Railroad Company.....	275,000.
Rapid Railroad Company.....	86,000.
Sault Ste. Marie Bridge Company.....	400,000.
St. Joseph, South Bend & Southern Railroad Co. leased to the Indiana, Illinois & Iowa Railroad Com- pany.....	300,000.
Toledo & Monroe Railroad Company.....	375,000.
Traverse City, Leelanau & Manistique Railroad Com- pany .....	200,000.
Wabash Railroad Company.....	4,600,000.
Wisconsin Central Railway Company, operating Goge- bic & Montreal River railroad.....	380,000.
Wisconsin & Michigan Railway Company. ....	225,000.

To this assessment is attached the following certificate :

"STATE OF MICHIGAN, {  
County of Ingham, } ss :

954e We do hereby certify that we have set down in the above  
assessment roll, all the property of railroad companies, express  
companies, union station and depot companies, stock car, refrig-

erator and fast freight line, and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal, and other purposes, levied, throughout the State, during the year 1903, as determined by us.

In witness whereof we have signed this certificate at the State capitol in the city of Lansing, State of Michigan, this 15th day of February A. D. 1904.

ANGUS W. KERR,  
WILLIAM T. DUST,  
JAMES C. McLAUGHLIN,  
Members of the State Board of Assessors  
of the State of Michigan."

There is also attached to this roll a certificate after review which sets forth the names of the several railroad companies, the value as originally assessed and the value as reviewed, which is signed by the entire board.

There is also attached the warrant directed to the auditor general and this is signed by the entire board.

955 HARRY C. SNELLING, sworn for complainant.

Direct examination by Mr. BUTTERFIELD :

Mr. BUTTERFIELD : I desire, before proceeding with the testimony, to let it appear that complainant renews objection to the admissibility of any testimony tending to show that the value of the property of this complainant (or any of the complainants in cases in which testimony is permitted by stipulation to be offered, is other or different from the value fixed by the assessment of the State board of assessors, and desires to take all testimony tending to rebut the testimony offered by the defense on the subject of the valuation of railroad property without waiving its objection, and without prejudice to its right to insist that all such testimony shall be struck out.)

I reside at White Plains and am transfer agent for Michigan Central Railroad Co., with headquarters in New York ; as such agent, transfers of stock and registrations of bonds are made by me or under my direction ; I have here the transfer books of the Michigan Central. The total number of shares transferred during the year ending August 15, 1902, was 9,471 (at par value \$947,100) ; of these 7,466 (par value \$746,600) were transferred to brokers or brokerage houses.

168,143 shares of Michigan Central stock (par value \$16,814,300), now stand in the name of the New York Central railroad ; being transferred prior to June 30, 1901, as follows :



In 1898.....	159,349 shares
In 1899.....	3,439 shares
In 1900.....	1,652 shares
In 1901.....	3,703 shares

Total..... 168,143 shares

Exhibit 1 of May 19, 1904, is a circular issued by the New York Central to stockholders of the Michigan Central, offering to  
956 purchase their stock on terms therein expressed (offer in evidence under objection of irrelevant).

This offered, on surrender of shares of the Michigan Central stock, to pay \$115 a share in gold bonds of the New York Central & Hudson River Railroad Co. bearing  $3\frac{1}{2}$  per cent., payable semi-annually, maturing February 1, 1998, the shares to be held in trust as collateral security for the bonds.

The aggregate outstanding capital stock of the Michigan Central is, and in 1902 was, \$18,738,000.

I have in my office the register of Michigan Central registered bonds; the total amount of first mortgage bonds registered on May 1st, 1904, was \$3,436,000, the amount in names of savings banks being \$2,370,000.

(Mr. BUTTERFIELD: I offer in evidence such portions of the bond register and stock transfer registers as embrace the testimony witness has given. \* \* \* I want to show transfers made during year you adopted as a test of market value—ending August 15, 1902.)

#### Cross-examination by Mr. KNAPPEN:

The transfer record does not show the price at which stocks and bonds were sold; it is not a correct record of sales; very often sales made in Wall street do not come to the office to be transferred. My only knowledge of a transaction comes when an assigned certificate is presented for transfer on the books.

The 9,471 shares transferred for year ending August 15, 1902, were to the following persons:

957

Date.	Name.	Amount shares.
1901.		
Aug. 30.	Anna E. Hughes.....	527
Sep. 26.	Louis Joseph Thal.....	100
Oct. 28.	Jesup & Lamont *.....	500
29.	Caroline Cavers.....	13
31.	John Wallace & Co.*.....	2
31.	Edward J. Bell. ....	1
31.	Thomas L. Manson & Co.*.....	100



Nov.	4.	John Wallace & Co.* .....	3
	6.	George Leask & Co.* .....	50
	6.	Matilda P. Shattuck.....	13
	6.	Edward Z. Shattuck ...	10
	6.	Lorraine M. Shattuck.....	10
	6.	Matilda P. Shattuck †.....	10
	6.	F. J. Lisman .....	200
	7.	Clarence H. Wildes* .....	100
	7.	John Wallace & Co.* .....	50
	8.	Warren G. Smith .....	100
	8.	F. J. Lisman .....	200
	11.	James Joy .....	100
	12.	Frederick K. Trowbridge.....	10
Dec.	5.	Agelaide Kennedy, William Alexander and Richard Dandy (jointly) .....	341
		Bossevain & Co.*.....	30
		A. Sartorius*.....	10
		Edward J. Bell .....	1
		John Wallace & Co.*.....	127
		E. W. Bernbaum .....	147
		J. & W. Seligman & Co.*.....	52
		Blake Bros. & Co.* .....	5
Dec.	6.	Matilda W. Bruce.....	26
		John Wallace & Co.* .....	50
		A. M. Kidder & Co.*.....	11
Dec.	7.	Bossevian & Co.*.....	10
Dec.	9.	Bossevian & Co.*.....	30
		Edward B. Weeks.....	13
Dec.	10.	J. & W. Seligman*.....	118
	11.	John Wallace & Co.* .....	30
	16.	John Wallace Co.* .....	3
	17.	Charles Minzesheimer & Co.*.....	100
	18.	J. & W. Seligman & Co.*.....	30
		A. J. & I. A. Bach.....	5
Dec.	20.	C. S. Treadway .....	10
	21.	August Belmont & Co.*.....	10
	31.	J. W. Bowen & Co.* ..	9
		J. & W. Seligman & Co.*.....	1,011
1902.			
Jan.	9.	Alice Mary Davis .....	10
		George W. Bissell.....	90
Jan.	14.	N. W. Halsey & Co.* .....	10
	15.	Rev. Wm. Reed Thomas.....	5
	16.	Clarence H. Wildes* .....	200
	17.	John Wallace & Co.* .....	34
	18.	McKinley & Sherman* .....	100
	20.	R. L. Day & Co.*.....	13
	28.	L. J. Solomon*.....	10
	30.	H. P. Goldsemidt & Co.*.....	30

Feb. 15.	M. Taylor Pyne.....	100
	Herzfeld & Stearn *.....	20
	Kate A. Mead .....	2
	Anna M. Moulton .....	3
	Abby Moulton.....	3
	Amelia A. Moulton.....	4
Feb. 11.	John Wallace & Co.*.....	7
27.	Charles H. Babcock and Henry R. Wood †.....	8
Mar. 5.	Vermilye & Co.*.....	50
10.	Arthur L. Leland & Co.*.....	25
11.	John Wallace & Co.*.....	15
12.	John Wallace Co.* .....	10
14.	John Wallace Co.*.....	25
19.	John Wallace & Co.*.....	7
24.	Winslow, Lamar & Co.* .....	1,000
27.	Kate Harrison.....	3
	Madeline Hopkins .....	3
	Leslie Muller.....	4
	Zenas E. Newall .....	10
Apr. 1.	Louisa S. Jelly .....	4
4.	John Wallace & Co.*.....	4
7.	William K. Gillett.....	100
8.	Theodore Rosewald .....	100
9.	Carrie P. Parker †.....	5
May 9.	John H. Davis & Co.* .....	100
	Dominick & Williams *.....	100
	Kingsley, Mabon & Co.* .....	100
	Wolf Bros. & Co. ....	400
	McIntyre & Marshall * .....	105
	Charles Minzesheimer .....	30
	Charles Minzesheimer & Co.*.....	30
	J. & W. Seligman & Co.* .....	1
	Nathan H. Heyman.....	10
	John Wallace & Co.* .....	107
	Edward J. Bell .....	4
May 12.	Blake Bros. & Co.....	100
	Frederick E. Chapin.....	50
	George Howard.....	50
May 13.	Bossevain & Co.*.....	20
	Herzfeld & Stern * .....	10
May 14.	John Wallace & Co.* .....	35
21.	Simon Uhlmann .....	100
23.	Edward Sweet & Co.*.....	500
28.	Counselman & Day *.....	100
27.	Florence A. Barcow.....	7
28.	Charles Minzesheimer & Co.*.....	100
29.	John H. Davis & Co.* .....	100
Jun- 2.	H. P. Goldschmidt & Co.*.....	1
14.	J. H. Bache & Co.*.....	25

19.	John Wallace & Co.*	20
20.	William K. Gillett	200
23.	John Wallace & Co.*	5
24.	John Wallace Co.*	1
25.	L. J. Solomon *	10
30.	Brand, Jones & Co.*	20
	J. & W. Seligman & Co.*	400
	C. I. Hudson & Co.*	100
	Perry Townsend	100
	S. V. White & Co.*	100
	Fahnestock & Co.*	400
July 10.	Gordon Tweed	10
	Miss Brenda Tweeda	10
July 18.	Florence A. Barcow	14
	Edward H. Shell †	14
	Edward H. Shell ‡	14
July 19.	Chas. D. Smith	8
Aug. 6.	H. P. Goldschmidt & Co.*	33
	John Wallace & Co.*	9
Aug. 15.	H. P. Goldschmidt & Co.*	10

\* Broker.

† Trustee or executor.

‡ Guardian.

958 The transfer books show from whom shares were transferred; the New York Central Railroad Co. has transferred none of those purchased between 1898 and 1901, and still holds 168,143 shares.

#### Redirect examination :

Exhibits 2 to 6 inclusive, of May 19, 1904, are the published annual reports to stockholders of the New York Central & Hudson River Railroad Co. for each of the years ending June 30, 1898 to 1902, inclusive.

#### Recross-examination :

I do not know whether in giving the number of shares (7,466) transferred to brokers, I included those where I was not sure they were brokers.

The New York Central controls the Michigan Central (and in a measure its organization), through the ownership of its stock; the Michigan Central, a New York Central and Vanderbilt road. Have a list of registered bond holders of the Michigan Central  $3\frac{1}{2}$  per cent. first mortgage (amount registered \$3,436,000).

There are other registered issues.

The books show where the registered bonds of the Michigan Central secured by mortgages on subsidiary companies are held. There

is an issue of \$700,000 secured on the Kalamazoo & South Haven—all registered; an issue of \$2,600,000 (4 per cent.) Air Line bonds, of which \$967,000 are registered; a \$2,000,000 issue secured on the Jackson, Lansing & Saginaw (3½ per cent.) of which \$945,000 are registered; a \$725,000 issue secured on Terminal railroad, (4 per cent.) of which \$134,000 are registered; a \$4,000,000 issue, secured on Detroit & Bay City (5 per cent.)—a good part of which, but don't know how many, are registered. Have not here a list of transfers of registered bonds 1900 to 1902, and nothing to show transfers at that time.

959 JAMES MARWICK, sworn for complainant.

Direct examination by Mr. BUTTERFIELD:

I reside in New York city; have been practicing as an accountant for upwards of 13 years, during which I have had occasion to examine six or seven railroads, and make for them half-yearly reports.

They include the Toledo, St. Louis & Western; Fitchburg (each of which I reported for 5 years); Pittsburgh, Shawmut & Northern (which I reported for one year); Ohio Southwestern (where I reported on administration of receivers); Memphis & Charleston railroad (which I reported for re-organization committee). Prior to this, in Scotland, I was assistant auditor of the North British railroad for 2 years, and some other small railroads. The reports covered the accounts, administration and operation of the roads. I am retained by the Minneapolis, St. Paul & Sault Ste. Marie to make half-yearly reports on their accounts. The purpose of investigation was to satisfy the directors that the companies were properly managed and that any surplus, shown in accounts, was such as might be distributed in dividends.

I have examined the reports for 1902 and 12 years previous of the Michigan Central Railroad Co. and the market quotations of its stock in year ending August 15, 1902.

(Under objection by Mr. Knappen *that* incompetent and that it does not appear that witness has made such examination as to make his testimony on the subject competent.)

I am satisfied in my own mind that the quotations for the year ending August 15, 1902, are not such as to permit a fair estimate being made of the actual intrinsic value of the stock.

I have endeavored to inform myself particularly to enable me to express opinion as to the intrinsic value of the Michigan Central stock in 1902.

960 (Under objection of incompetent and hearsay, that it does not appear that witness has competent knowledge of the subject.)

I would value the stock in neighborhood of par for 1902; rather than over.

Q. Is it a fact that investors in securities of the class of the Michigan Central are unwilling to receive 3.5 per cent. on their investment, if they are to be taxed on it?

Mr. KNAPPEN: I object to that question as incompetent, it does not appear that witness is competent to express an opinion on the subject, or that he has sufficient data upon which to base any such opinion.

A. I am satisfied that the investors would not accept 3.5 per cent. return on their money if they were subject to be taxed.

Q. Assume that the value of a railroad company's property is to be determined by a process involving computation of an annuity at a certain rate of interest and state whether the rate of interest should be enlarged to the extent of adding the tax rate in the locality?

A. I do not approve of that system of valuing property; if valuation be made in that manner, the rate of return from investment should be increased so as to cover the tax and still yield a reasonable return to investor.

#### Cross-examination by Mr. KNAPPEN:

In 1902, there were \$21,275,000 Michigan Central bonds outstanding. I do not know what prices the purchasers of them paid; they may have paid upwards of par; I do not know where they are held; six-sevenths may be held by people in whose hands they are subject to taxation.

I do not consider that the market quotations for 1902 fix the value of a bond; the value of that or of stocks might be inflated.

In 1902, the Baltimore & Ohio, prior lien  $3\frac{1}{2}$  per cent. bonds, varied between 93 and 97.25; the first mortgage 4 per cent.,  $99\frac{1}{8}$  to 961 105;

The Pittsburgh Junction & Middle division, prior liens,  $3\frac{1}{2}$  per cent. 89 to 93.5;

The Central Pacific,  $3\frac{1}{2}$  per cent. bonds, (of great many millions) were—

	High.	Low.		High.	Low.
January .....	87 $\frac{1}{2}$	87	July.....	89 $\frac{1}{2}$	88 $\frac{1}{2}$
February .....	89	87 $\frac{1}{2}$	August .....	83 $\frac{1}{2}$	88 $\frac{1}{2}$
March.....	89 $\frac{1}{2}$	88 $\frac{1}{2}$	September.....	89 $\frac{1}{2}$	87 $\frac{1}{2}$
April.....	89	88 $\frac{1}{2}$	October.....	88	85 $\frac{1}{2}$
May.....	89	88 $\frac{1}{2}$	November.....	87	86
June.....	88 $\frac{1}{2}$	87	December....	85 $\frac{1}{2}$	84 $\frac{1}{2}$

The New York Central had \$100,000,000 of  $3\frac{1}{2}$  per cent. bonds maturing in 1997, which in 1902 were selling at high 109.5 and low 104;

The Pennsylvania railroad, convertible gold bond-3½ per cent., maturing 1912, were selling in May, 1902, at 103½ to 104½, high and low price for the balance of the year was 110½ to 103½;

The New York Central bonds were largely held by insurance companies.

In 1902, the Illinois Central 3½ per cent. bonds sold at high 105½ and low 104;

The Wisconsin Central 4 per cent. bonds, maturing 1949, between 88 and 94;

The Chicago & Northwestern 3½ per cent. bonds of 1987, 109½ and 111;

The Chicago, Milwaukee & St. Paul, 3½ per cent., general mortgage bonds, due 1989, amount \$10,396,000, 104½ and 104½;

The New York, New Haven & Hartford, 5 per cent. bonds of 1907, (don't know whether it had any 3½ per cent. bonds in 1902) were selling in 1902 at about 135;

The Lake Shore & Michigan Southern, 3½ per cent., 1998 bonds, fluctuated between 92 and 98. They would at 92 net the investor a trifle over 3½ per cent.

In the prices given, interest is accrued in the price, the amount depending on the time of year. I have made no computations on what the weighted average was or how much it netted on an average during the year. I know what the Michigan Central shows in its reports as earnings above operating expenses, the net earnings I haven't confined strictly to Michigan; I have taken the whole road; understand that about 60 per cent. of the total mileage is in Michigan, on track mileage basis.

I have made no computation to show Michigan's part of the road as against entire system on a track mileage basis.

The road is situated in Michigan, Illinois, Canada and New York. Have taken it as a whole, and haven't separated the taxes into the several jurisdictions.

In 1898, the \$70,000 in permanent improvements on account of second track is all I would consider as permanent improvements.

I haven't checked the reports for 1898 with the Interstate Commerce Commission requirements, to see how much would come within and how much without its classification. I have taken the published reports to stockholders.

I judge from a general examination of the statement to stockholders whether they have made permanent improvements.

Year.	Net earnings.	Operating expenses, per cent., inc. taxes.	Permanent improvements.
1898 .....	\$3,500,176 73	75.08	\$70,000
1899 .....	3,499,945 75	77.43	65,000
1900 .....	3,500,000 00	79.08	80,000
1901 .....	3,744,300 00	79.75	210,000
1902 .....	3,577,578 75	81.22	Nothing

These items are all taken from the reports to the stockholders. The Michigan Central has been increasing from 1898, both in revenue and expenses. The net earnings of 1902 are less than in 1901, \$77,000 more than in 1900, \$78,000 more than in 1899, \$77,000 more than in 1898, and about \$170,000 more than 1897; being about \$70,000 larger than the average for five years before.

According to the accounts, the net dividend earned by the Michigan Central after allowing upwards of 80 per cent. of gross receipts for operating expenses and taxes, was a shade less than 6 per cent. in 1902; the operating ratio, excluding taxes was 78.33 per cent. For 1902, I found nothing charged to operating expenses that properly belonged in extensions or improvements; they were making up for past depreciations; this I gather from report to stockholders.

(Under objection of irrelevant.)

The Lake Shore & Michigan Southern stock in 1902 sold for about 300 or 330; in 1901, between 200 and 300. Its net earnings in 1902 were \$8,460,228; it paid a 7 per cent. dividend in 1902 and earned about 6½ per cent. in addition.

Its operating ratio for 1902 was 70 per cent.,—the great bulk of its stock is held by the New York Central.

That the amount expended in 1902 on the Michigan Central was necessary to make up depreciations of previous years is an inference from a study of the figures for ten years. From this study I can tell that the property was allowed to depreciate from 1894; this is based entirely on the figures in the report.

#### Redirect examination :

Q. Explain how you are able to judge whether expenditures charged to operation are properly charged ?

A. I have taken the statements of the equipment and mileage made by engines and cost of repairs; I find rate of repair on engines, per engine mile in 1898, to be 2.86c.; in 1897, 2.89c.; 1895, 2.51c.; 1894, 2.92c.

I know the motive power cannot be maintained at any such rate as that to keep up the total for the 9 years from 1894 to 1902, and that is only 4c. a mile. The average per engine, per year, for those 9 years is only \$1,331, and renewals on 461 locomotives averaged 16.4 during that period; this 16.4 would have been much less but for the purchase in 1901 of 53 engines and in 1900 of 34. The average expenditure on maintenance and renewals of passenger cars during that period was \$512, of freight cars \$57.30.

I base my conclusions on my knowledge of railroading, forming my opinion from comparisons made with expenditures on other roads, consultation with engineers of different roads, and experience in motive power department and shops.

Mr. KNAPPEN : So far as testimony based on statement of engineers and others, we object to it as incompetent.



The renewals appear to be inadequate; they average, per mile, in 1894, 126; 1895, 143; 1896, 232; 1897, 324; 1898, 263; 1899, 257; 1900, 146; 1901, 227; 1902, 232. An average of 8,208 tons of rail were laid during each of the 9 years referred to, this should be about 15,000 tons.

(Under objection of incompetent and irrelevant.)

In the examinations testified to, I always reported to directors whether the property had been maintained both as to roadway, structures and equipment; in this analysis of the Michigan Central report, I am applying knowledge obtained in those examinations. From 1887 to 1894 there were no new fences built.

(Under objection of incompetent, and that witness has not shown sufficient knowledge upon which to base an opinion.)

My opinion from an examination of the accounts, is that in 1894 the road was allowed to depreciate in order to enable the company to pay the dividend.

Any excess of expenditure charged to operation from 1898 to 1902 over normal operating ratio should be applied to the restoration of what was omitted in the property prior to 1898.

The company should maintain the property so, that at the end — a given period it is as good as it was at the beginning, and it may have to improve it to meet competition. If money expended in improvements will not bring in additional revenue, I consider it a proper charge to operating expenses, and do not think you should  
965 capitalize any expenditure that does not bring in some return, otherwise it is only a question of time when road will go into the hands of a receiver.

(Under objection of immaterial.)

The custom in England has been to capitalize everything they could justify in any way, *e. g.* if a steel is substituted for wooden bridge, they charge the difference in cost to capital, while it really does not bring any return to the company.

The result is an enormous capitalization. I think expenditure for the renewal of locomotives should be made equally, so no exceptionally heavy charge will occur in any one year; in each year sufficient should be charged to operating expenses to gradually improve the equipment so as to meet the conditions of the time; ten years ago engines might have been comparatively light; during that period a fund should have been set aside to replace the old engines with heavier ones, this is true in all departments of roadway and equipment.

#### Recross-examination:

Increased traffic increases gross earnings and means larger engines.

Freight traffic has been increasing in the last few years. The

general trend is an increase with the density of population; increase in traffic means additional equipment.

The more equipment used, the greater the earnings, unless rates are reduced or expenses increased; if you have stability of rates and expenses, the immediate effect of increased expenditure for equipment is an increase in gross earnings.

The figures in reference to maintenance of motive power, etc., are gathered from the reports to stockholders. In answering questions regarding bond issues, referred to the Financial Review. Dur-

966 ing the last ten years (to 1903) the total amount charged to capital on account of new equipment, has been 1,050 freight cars; whatever else has been expended for new equipment during the last ten years, has been paid out of operating expenses. Renewals of locomotives average 16.4 per year, which is charged to operating expenses. Engines have not been increased in the past ten years; freight cars have been increased 845 (in addition to 1,050 added in 1903) and the passenger cars, 17.

The increase was required to take care of depreciation in other freight and passenger cars and was charged to operating expenses. I base all my criticism upon the stockholders' reports.

(Mr. KNAPPEN: I move to strike out the witness' testimony on proposition that market quotations of sales of Michigan Central stock and bonds do not permit a fair judgment of the value, and as to his opinion of the valuation of the stocks and bonds, and as to what return investors are willing to take on Michigan Central property, as incompetent, and that witness has not shown himself competent to give that opinion.)

Redirect examination:

Improved motive power enables handling the same equipment and traffic at less cost. In the last five years, it has been necessary for railroads to increase motive power to meet competition whether there has been an increase in traffic or not.

967 CONSTANT A. ANDREWS, sworn for complainant.

Direct examination by Mr. BUTTERFIELD:

I reside in New York, and am president of United States savings bank. Savings banks in New York are exempt from taxation upon investments in railroad bonds.

No cross-examination.

968 CHARLES F. COX, sworn for complainant.

Direct examination by Mr. BUTTERFIELD:

I reside in New York, and am treasurer of the Michigan Central Nickel Plate; Big Four, and about 35 other railroad companies; am

president of the Canada Southern ; and vice-president, secretary and treasurer of the Lake Erie & Western.

I have been treasurer of the Michigan Central over 5 years, as such, receive all funds, have charge of negotiable paper, make all payments, transfer the stock and register the bonds and keep statistics of the company.

(Witness shown Exhibit 1, May 19, 1904.)

(Under objection to all this class of testimony as immaterial.)

All the stock of the Michigan Central owned by the New York Central was acquired on the terms expressed in that circular, at the price therein specified ; the stock being exchanged for the obligation of the New York Central, secured by the stock itself, at the ratio of 115 to par.

The obligation is a collateral trust bond of the New York Central, without security except the deposit of the stock acquired by means of the bond. The Michigan Central stock held by the New York Central Co. is deposited with a trust company as collateral for the support of the bonds.

Examined the records of sales of stocks and bonds to find the prices those collateral trust bonds were bringing in the market.

The highest price they ever sold at was 102.25 (since 1902), and the lowest, (in 1898, soon after original issue) was 91.25 ; the present price is about 89.

The high and low price from the Financial Review, was :

99	Date.	High.	Low.		Date.	High.	Low.
	1901.				1902.		
January*	.....	97½	97½	January.....	97½	95½	95½
February.....	97	96	96	February.....	95½	94½	94½
March.....	96½	96	96	March.....	94½	94	94
April.....	96½	94	94	April.....	95½	94½	94½
May.....	95½	94	94	May.....	95	94	94
June.....	95½	94½	94½	June.....	95	94½	94½
July.....	96½	95½	95½	July.....	95½	94½	94½
August.....	95½	95½	95½	August.....	94½	93	93
September.....	95½	94	94				
October.....	95½	.....	.....				
November.....	96	95½	95½				
December.....	96½	96½	96½				

\* All January sales of the coupon bonds ; very few transactions in them.

Registered bonds generally sell about at a point below others.

As given in the Commercial and Financial Chronicle, quotations on Michigan Central stocks are as follows :

Date.	High.	Low.	Date.	High.	Low.
1901.			1902.		
October .....	140	116	January.....	180	136
November.....	180	128	March.....	188.25	136
December .....	170	156	April.....	192	136
			May.....	178	133
			June.....	175	128
			August.....	164.75	124

(Under objection of incompetent.)

Those quotations had no relation to the stocks' real value; my reasons for this statement are: 1st, what I know about the earning capacity of the property; 2nd, what I know about the probable market for the whole or any considerable bulk of the stock, of the customs of Wall street, and the possibilities, with reference to making market prices for stock when only a small amount is on the market.

(Under objection of incompetent, and that witness does not appear competent to give the market value of the stock.)

In my opinion the stock as a whole had no value above par.

Have been president of the Canada Southern over four years, previously vice-president for many years, and think I am competent to express an opinion of value of Canada Southern stock in 1902. My opinion is that it was not worth over 55.

I have a decided opinion that it is proper to charge to  
 970 operating expenses sufficient sums to maintain the property  
 against depreciation and keep abreast of technical develop-  
 ment.

When we charge what are called betterments to operating expenses, we pay for them but once; if we pay for them out of bonds, considering interest, we pay for them two or three times; that would be an unfair tax on the public and unfair charge on the stockholders' revenue.

There is a fallacy in the word "permanent" in connection with "betterments;" the operation of a railroad is undergoing so many and rapid changes that it is impossible to say a thing is permanent. We might pay for a betterment today in fifty year bonds; before they had run half of their course, the betterment might become absolutely useless, *e. g.* through a change of motive power. The old method was to patch up engines, making them live as long as you could, and, to a certain extent, calling it permanent improvements, and paying for it out of capital.

The present method is different. We now work our engines as far as they will go and then dispense with them; there is abundant evidence that by the present method, the life is not over five years, and it would be absurd to pay for that engine, though it added to

the number of locomotives with a long term bond. Every addition to facilities immediately raises the percentage of cost of renewals.

We are not justified in considering any betterment as permanent and chargeable to capital, unless it is going to add permanently to earning capacity. The great mass of charges, which railroads are now making, to operating account, and calling betterments, do not increase the earning capacity, *e. g.* on the Michigan Central a large sum of money every year is spent in what are technically called betterments, but there has been no material variation in 20 years in its ability to pay to its stockholders. The tendency of the growth of the country through which a railroad runs is to raise the unit of everything connected with its work, and unless it can live up to the increased units, the former earning capacity can not be maintained. We are obliged to carry heavier loads per train and per car, which necessitates raising the unit of construction on the roadway and everything connected with it; a large part of our betterments result merely in raising total scale of operating cost and consequently keeping the earning capacity about level.

#### Cross-examination by Mr. KNAPPEN:

It costs more to reproduce the equipment in its present improved condition, and by charging to operating expenses, the cost of bettering equipment, to keep abreast of railway conditions, we have a more costly equipment and the investment is larger each time. The answer, to effectiveness of that argument, is that we are obliged to do a larger amount of business to obtain a given amount of net earnings.

As measured by gross earnings, the Michigan Central does a larger business year by year, and larger during a five year period, than during the preceding five years. In what I have said, was trying to indicate that the value to the stockholder of his investment would not appreciate in the ratio in which we increase the facilities for doing business. There is an increased amount of investment; Michigan Central earnings have just about held their own for the last 20 years.

There has been a slight lowering in the rate of interest since that time; 20 years ago we would not have thought of trying to float a 3½ per cent. bond. In a moderate degree I think investors are satisfied with a less rate on a safe, permanent investment than they were 20 years ago. Though there has been a slight downward tendency, I think it has been exaggerated largely.

The difference in the last 20 years not far from the difference between a 4 and 3½ per cent. investment; don't know as it is as much as 1 per cent. The value of money has a tendency to be cheaper as population increases; the general drift has undoubtedly been downward.

I doubt whether the decline in the value of money has been out

of proportion to the decline of the earning capacity of money as represented by capitalization of railroads or anything else.

The cost of reproduction, taking everything we use on a railroad, is higher than 20 years ago; everything on the road is of a much more costly grade than 20 years ago.

If the Michigan Central were built today, on the basis of present appliances, it would cost much more than if built 20 years ago with the appliances then in use, and probably much more than appears on the books to be its cost, as we have paid for many changes out of earnings instead of capital. Looked at from the point of building another, the road is, and has steadily grown, intrinsically more valuable than it was 20 years ago; it is each year doing much more actual work, carrying more passengers and freight, and the gross earnings are larger. When I say it does not earn any more, it is by reason of conditions, such as rates and expenses, which prevent making the net, keep pace with the gross, earnings.

For the last two or three years, after charging to operating expenses all we do charge the Michigan Central has earned about 6 per cent.; it has been increasing the net earnings, notwithstanding the practice of charging to operating expenses, the class of betterments, mentioned and has had a steady increase in growth.

The Michigan Central stands conspicuous among Michigan railroads for the high quality of its equipment, track, right-of-way, numerous improvements and the high grade in which the road and its stock is kept up; I know of no other road in Michigan which compares with it favorably in that respect. While there have been years when we let the property run down, taking all the years  
 973 together, the process of betterment has been steadily going on.

It is a part of the Vanderbilt system of operating roads to bring them to as high a state of efficiency as possible; that idea has been applied to the Michigan Central.

Notwithstanding all this, I don't think the stocks' value has increased at all; I think it has gone to a point where it can't increase. The fact that 17-18s of the stock is owned by the New York Central presents no difficulty in getting at its market value; I think that is the only criterion of the value; if you want to know the value of the total capital stock you should take somebody that is willing to take it all, as New York Central did; they don't need it all to get control, but would like to have it. It cannot, under its trust arrangement, part with any of the stock.

The condition of the bond issued by the New York Central in exchange for Michigan Central stock is that so long as New York Central pays the interest, the stock is the New York Central's property, should it default in payment of interest the bondholder would have recourse to his stock. The bonds bear  $3\frac{1}{2}$  per cent. interest and have been selling at about a  $3\frac{1}{2}$  per cent. basis; if Michigan Central stock pays a 5 per cent. dividend, the New York Central gets the surplus above  $3\frac{1}{2}$  per cent.

There is a distinction between New York Central's buying Michigan Central stock at 115 in money and buying it at par with a bond, it is not as a general thing sold at par; by the bond it paid 115 for the par value of the stock, and agreed, during period covered by the bond, to return to stockholders  $3\frac{1}{2}$  per cent. net on principal of the bond; the bonds run until 1948. The bonds are dealt in very freely; the credit of New York Central, as well as value of stock, protects its price.

New York Central at maturity of the bond obligates itself to pay for the stock; the seller, of the stock and bondholder, has no interest in stock except as security for payment of the New York Central's obligation. The market value of the bond would be governed by value of the obligation the same as any other bond, depending on the credit of party issuing, and security underlying it.

The New York Central is placing its promissory notes at par; this bond having the credit of the New York Central and collateral trust of the stock behind it, only sells at 89; which shows that in the public estimation, the value of the bond is only in proportion to the value of the Michigan Central stock underlying it; 89, as the price, is a 4 per cent. par investment. Michigan Central new 1st mortgage bonds, on the market for two years, are selling at about 97, as compared with 89. In 1898, within a few months after these bonds were issued, the market went down to 91; the average value of those bonds in 1898 was probably 95, and on this basis, Michigan Central stockholders during 1898 were willing to take 109 for stock.

975 THOMAS F. WOODLOCK, sworn for complainant.

Direct examination by Mr. BUTTERFIELD:

I reside in New York city, being editor of a Wall Street journal for two years, and as such, have supervision of the newspaper, which is especially designed for investors' undertakings; am also a writer; my particular study has been in the direction of railroad matters.

I examined record of sales of stocks and bonds of the Michigan Central Railroad Co. to determine whether the prices of its stock in the year ending August 15, 1902 furnished a fair basis on which to value its entire capital stock; my conclusion was that the sales subsequent to June 30, 1901, were no criterion of the value of any considerable portion of the stock.

My reasons are: The New York Central secured a large majority of the stock, leaving only a relatively small quantity outstanding; the period referred to, was one of great speculative activity, particularly in what are known as, Junior Vanderbilt roads, and resulted in ridiculous quotations, on the Nickel Plate and stock of that character, accompanied by the report that the New York Central was going to pick up all those stocks at fancy prices.



(Under objection of immaterial and irrelevant, and "I understand the question is the market value of the stock.")

As a stock, paying dividends at 4 per cent., but showing no substantial surplus, taking into account the solid character of the system and general connections, I should count Michigan Central stock to be worth from 80 to par to the investor, in default of very special circumstances, which, might or might not exist, according as analysis would show.

Q. What in your judgment is the true basis of valuation of a railroad property and railroad stock?

976 Mr. KNAPPEN: That is objected to as immaterial and incompetent as to the basis of value of railroad stock, and as to basis of value of railroad properties, as incompetent, for the reason that it does not appear that witness is an expert in railroad values independent of stock values.

A. The value of property is based upon its income producing capacity; its power to make return to the owner; in the long run, the value of a stock would depend on the dividend paid.

(Under objection of incompetent, the witness not having shown experience to testify as an expert.)

The cost of reproduction of the property is not a question we would consider in the market.

Q. Would investors in Michigan Central bonds, and railroads of the same class, have been willing, in 1902, to receive  $3\frac{1}{2}$  per cent. net return on the investment, if they were to be taxed on it?

Mr. KNAPPEN: We object to that as incompetent, there being no basis, so far as the experience of the witness has been shown, or any data given by him for such determination and the element, if they were to be taxed, so far as shown from the examination of the witness, is purely hypothetical and arbitrary.

A. It is difficult to answer that, except by general statement that people who expected to be taxed on their incomes, and could not escape by ordinary methods, would not buy that kind of bonds.

I know this to be a fact, as I have been asked to advise as to investments, *e. g.* a widow who would be compelled for safety's sake to carry her investments in such form that she would be liable to be taxed; she would need the very best kind of investment, and I have always advised against holding bonds on the ground that if they were going to be taxed, her income would be materially reduced.

977 "Q. Then if a system of valuation of railroad property is to be worked out and applied to the Michigan Central Railroad Company in which the computation of an annuity upon its physical property is to be made at a rate which is the rate that investors in securities of that company are willing to receive as a net return upon the investment, should the rate upon which these securi-

ties sold in the market be increased by the tax rate in the locality where the property is valued?

Mr. KNAPPEN: That is objected to as incompetent and as being purely theoretical without practical basis as shown by any testimony in the case.

A. Certainly."

Q. From your own knowledge, are you able, to say, as a general proposition, that persons or corporations who invest in bonds of a railroad on a basis of  $3\frac{1}{2}$  per cent. are exempt from taxation?

Mr. KNAPPEN: That is objected to as not a proper subject of conclusion or expert testimony.

Mr. BUTTERFIELD: I am not asking it as expert testimony, I am asking it as a fact.

Mr. KNAPPEN: It is objected to as purely theoretical and speculative, and I object to it further as immaterial for the purpose of this inquiry.

A. Yes, sir. I point in confirmation to the demand existing for New York city bonds and other similar non-taxable securities. I examined the New York Central reports to determine how much Michigan Central stock was acquired by New York Central, independent of question when the transfer certificate was made, and find the following:

978 Year ending—	Michigan Central stock outstanding.	Acquired by New York Central.	Bonds issued in payment.
June 30, 1898.....	\$18,738,000	\$14,902,100	\$17,137,415
June 30, 1899.....	"	1,225,300	1,409,210
June 30, 1900.....	"	284,400	327,000
June 30, 1901.....	"	402,400	462,000

(Witness gives quotations on these bonds for the first 6 months of 1900, ranging from 94 to  $97\frac{1}{2}$ .)

Cross-examination by Mr. KNAPPEN:

All bonds, except certain city and State bonds, are taxable in New York. No person would purchase railroad bonds at  $3\frac{1}{2}$  per cent. basis, unless he expects to evade taxation, as taxes would eat up more than half of his income. There is always a large class of investors to whom taxation presents no terrors. A great many non-residents of New York I know from my financial business, do not pay taxes on such bonds. Markets are afforded for such bonds by banks and trusts, where taxation is not imposed.

I don't know whether Government bonds are taxable or not; a Government bond, drawing 2 per cent., has for several years sold a

great deal above par, for special reasons entirely connected with circulation. National banks hold a vast majority of the 2 per cents; the last loans were greatly over-subscribed, the great bulk being secured for circulation or deposit. There has, during the past few years been a market for the bonds of a few of the best railroad companies at  $3\frac{1}{2}$  per cent. at par.

Bonds of the Pennsylvania, New York Central, Chicago & Northwestern, and I presume Michigan Central railroads, for several years, during that period, were selling to net the investor not more than  $3\frac{1}{2}$  per cent.; market was sufficient to take care of the  $3\frac{1}{2}$  per cent. bond issues of these roads at par and better, notwithstanding taxation; plenty of good  $3\frac{1}{2}$  per cent. bonds have been worth par until within a year or so; assuming it to be a free market, the

979 market for bonds controls their price.

A bond is worth what it will bring in a free market under normal conditions. And bonds of the roads mentioned sold at par or better during that period, and might fairly be counted as worth par.

Situations of investors in matters of taxation vary all over the country; I *presume*, in some jurisdictions taxation is two or three times higher than in others, and in some, financial securities are taxed lower than other property, and these changes exist all over the country. A bond is worth less to a person who is going to be taxed on it than to one that isn't.

A bond is worth substantially what it sells for in the free market; a  $3\frac{1}{2}$  per cent. bond is not worth par today; stocks are greatly depressed over two years ago; the value of a stock is not fixed by its market price at a given time; in valuing bonds a great number of things must be taken into account, first, there has been a distinct advance in the rate of interest, for over 18 months, and a bond would not be worth, or sell for as much, today as 18 months ago.

Two years ago, about the time the Lake Shore began refunding,  $3\frac{1}{2}$  per cent. bonds sold at ridiculous prices, as events have since shown. New York Central  $3\frac{1}{2}$  per cents sold for 113 and nobody would claim that was the value.

"Q. So long as there is an ample market for a bond at a given price, the market value of that bond is not depressed at all by the fact that a certain class of investors cannot afford to hold it?

A. It would be if they were sufficiently numerous to make the market. Provided the market was perfectly free, I would say the number of people affected was small in proportion to the whole."

A free market is when there is an ample market for bonds

980 at that price, and when  $3\frac{1}{2}$  per cent. bonds sell freely at par or better, the bond is well worth that.

The rate of annuity on the physical property ought to be a net return of  $3\frac{1}{2}$  per cent., subject to no deduction.

I understood Mr. Butterfield's question to be, What rate should be taken for calculation of the annuity on the Michigan Central

road, if it is to be subject to taxation; are taxes to be allowed before adopting the  $3\frac{1}{2}$  per cent. rate?

You must take into account all taxation coming out of the company. Am not speaking of taxation on stocks and bonds, but about that against the railroad company directly.

Mr. KNAPPEN: That is what you mean, Mr. Butterfield?

Mr. BUTTERFIELD: Certainly.

(Under objection of incompetent.)

What I meant was, assuming the tax rate to be  $\frac{1}{2}$  per cent., that should be added to the annuity rate, making the reckoning on the basis of 4 and not  $3\frac{1}{2}$  per cent.; it must net  $3\frac{1}{2}$  per cent. to investor. Taxes should be deducted from the earnings before capitalization.

During the year ending August 1902, Michigan Central stock was worth, 80 to par. I base my judgment of actual condition of the road on annual report. Do not know operating ratio for the several years before 1902; that is about the last thing I note in a report; operating expenses were somewhat heavy, indicating that the Michigan Central, is bringing the road up to the requirements of modern transportation, maintaining efficiency and real value. They are not from our point of view able to do a large amount of business; our point of view is that of dividends; there was a small steady growth in gross earnings and actual business.

981 Regard this as a road confronted with considerable increased requirements; it needed a great deal of expenditure, so it could properly serve as a link in a very important system. Have always regarded the Michigan Central as one of the weak properties in comparing dividends with Lake Shore, "needing that kind of expenditure and of limited dividend paying capacity." The large ratio of operating expenses indicates that it costs to reproduce more than it cost in previous years; the great test is whether the dividend paying capacities have increased, that makes the value.

I should call improvements in bridges and culverts, etc., renewals, from the point of view of a man who holds the stock and expects to stay with it. From the standpoint of the stockholder and investor, a railroad which is replacing its culverts, bridges and buildings with more permanent structures, is safer, but not more valuable; that may not bring it more actual dividends, but is an element to be taken into account; it would make one 4 per cent. stock sell at 60 to 65, as in the Atchison, and another at 82 or 85, as in the Union Pacific.

The increase in the physical condition of the Michigan Central would make a difference in the stocks' selling price; that is why I said 80 to par; par would reflect that very decidedly. I understand that the Michigan Central has been paying about 4 per cent. dividends; don't know what it paid during panic years 1893 to '97. Attributed 1902 activity in Michigan Central stock to activity of Junior Vanderbilts; there was a period of continuous advance in railroad stocks from September 1900, until September 1902.

In September 1900, the highest point was reached on stocks generally,—for example, New York Central:

Date.	Low.	High.	Date.	Low.	High.
1899.			1902.		
January .....	121½	141	January .....	159½	161½
December .....	120	134½	February .....	161½	166½
For the year:			March .....	161½	164
December .....	120	.....	April .....	156½	165½
March .....	.....	144½	May .....	153½	161½
1900.			June .....	153½	157½
January .....	131½	138	July .....	154½	167½
December .....	140½	165½	August .....	163	166
1901.			September .....	155	167½
January .....	129½	146½	October .....	149½	159
December .....	.....	171½	November .....	147	159½
			December .....	148	157½

982 (Under objection of irrelevant.)

This would not be called a Junior Vanderbilt. The Illinois Central, (independent of Vanderbilt system), quotations were as follows:

Date.	Low.	High.	Date.	Low.	High.
1899.			1901.		
January .....	114	122	For the year:		
December .....	105½	122	May .....	124	.....
For the year:			July .....	.....	154½
December .....	105½	.....	1902.		
January .....	.....	122	January .....	137	141½
1900.			February .....	137½	143½
January .....	110½	114½	March .....	138½	142½
December .....	.....	112½	April .....	141½	153½
For the year:			May .....	150	155½
June .....	110	.....	June .....	150	161½
December .....	.....	112½	July .....	159½	170½
1901.			August .....	164	173½
January .....	128½	136	September .....	147	173½
December .....	136	140½	October .....	141	155
			November .....	139½	148½
			December .....	147½	147½

(Under objection of irrelevant.)

The Chicago & Northwestern quotations were as follows :

Date.	Low.	High.	Date.	Low.	High.
1899.			1901.		
January .....	141½	152½	January .....	168½	177
December .....	148	169½	December ..	197	209½
For the year:			For year .....	168½	.....
January .....	141½	.....	November .....	.....	213½
September .....	.....	173	1902.		
1900.			January .....	204½	216
January ..	158	164½	December ..	210	223
December .....	166½	172½	For year :		
For the year :			January .....	204½	.....
June .....	150½	.....	April .....	.....	271
December .....	.....	172½			

(Under objection of irrelevant.)

The Pennsylvania quotations were :

Date.	Low.	High.	Date.	Low.	High.
1899.			1901.		
January .....	122½	142	January .....	142½	153
December .....	127	136½	December .....	145	152½
For year :			For year :		
December .....	127	.....	May .....	137	.....
January .....	.....	142	April .....	.....	161½
1900.			1902.		
January ..	128½	133½	January .....	147	151½
December .....	141½	149½	December .....	149½	158½
For year :			For year .....	147	.....
June .....	125	.....	September .....	.....	170
December .....	.....	149½			

983 (Under objection of irrelevant.)

The Ann Arbor quotations, for preferred stock, were :

Date.	Low.	High.	Date.	Low.	High.
1899.			1901.		
January.....	38	40	January.....	56½	58½
December.....	40	45	December.....	62	66
For year.....	36	48½			
1900.			For year:		
January.....	41	45	September.....	50	.....
December.....	51	59	December.....	.....	66
For year:			1902.		
July.....	40½	.....	January.....	63	66
December.....	.....	59	December.....	67	68½
			For year:		
			January.....	63	.....
			May.....	.....	78½

(Under objection of irrelevant.)

The Delaware & Hudson quotations were as follows :

Date.	Low.	High.	Date.	Low.	High.
1899.			1901.		
January.....	106½	117½	January.....	126½	162½
December.....	109½	120½	December.....	168	178
For year:			For year:		
January.....	106½	.....	May.....	105	.....
September.....	.....	135½	April.....	.....	185½
1900.			1902.		
January.....	113	119	January.....	170½	184½
December.....	134½	150½	December.....	153½	174
For year:			For year:		
June.....	110	.....	December.....	153½	.....
December.....	.....	134½	January.....	.....	184½

(Under objection of irrelevant.)



Quotations on Chicago, Milwaukee & St. Paul, common stock, were:

Date.	Low.	High.	Date.	Low.	High.
1899.			1901.		
January.....	120½	130½	January.....	142½	162
December.....	112	125½	December.....	157½	169
For year.....	112	136½			
1900.			For year:		
January.....	115½	119½	May.....	134	188
December.....	125½	140½			
For year:			1902.		
July.....	109½	.....	January.....	160½	168½
December.....	.....	148½	December.....	166½	179½
			For year:		
			January.....	160½	.....
			September.....	.....	198½

954 EMORY R. JOHNSON, sworn for complainant.

Direct examination by Mr. BUTTERFIELD:

My age is 40 years; my residence is Philadelphia. I have been professor of transportation and commerce in the University of Pennsylvania, for ten years; for some years have been editor of Annals of the American Academy of Political and Social Science; "I am now connected with the department of economics and sociology of the Carnegie Institute, in charge of one of eleven divisions of the department of economics and sociology, which is engaged in the preparation of the economic history of United States; I was a member of the Isthmian Canal Commission from 1899 to March 1904; for seven months in 1899, was expert agent on transportation for the United State- Industrial Commission for three months during 1898, was special employee of the Interstate Commerce Commission, enlarging and improving its library; did work for United States Department of Labor on the subject of railway labor," in 1896 and 1898; in 1891, was chosen arbitrator between Cuban and Pan-American Express Co. and United Railways of Havana, but did not serve.

I am a member of the following societies: Counselor, American Economic Association; member board of directors American Academy of Political and Social Science; member National Geographic Society of Washington, and first vice president the Geographic Society of Philadelphia.

My books comprise: A volume on Inland Waterways, Their Relation to Transportation (pub. 1893); Report, on Industrial and Commercial Value of Isthmian Canal to the Government in 1902; volume on American Railway Transportation; now at work on transportation book for use in secondary and commercial schools.

985 My papers comprise: Some published by the United States Department of Labor; in bulletin of American Geographic Society; in Quarterly Journal of Economics, by Harvard university; in Political Science Quarterly, by Columbia university; in Annals of the American Academy, and frequent contributions to the more popular magazines.

I have read Prof. Adams' testimony in this case, and have given some study to question of valuation of railroad property as it arises in this litigation.

I think the stock and bond plan is practically worthless as a method of deriving an accurate valuation of railway property, as to determine the value of a railway property from the securities of the corporation, it is necessary, first, that the securities should represent actual investment, and, second, that the investment made at the time of issues of these securities shall correspond fairly close with actual value of property into which the investment went, and third, the stocks and bonds, (particularly, stocks) of a railroad corporation have market values influenced by speculative forces, independent of the property's actual value.

(Subject to objection of incompetent and immaterial.)

Mr. Butterfield offers in evidence and reads from the Interstate Commerce Commission's report for 1903, (Ex. 1, May 21, 1904) as follows, beginning page 29:

"It may be proper to add a word relative to the plans that may be pursued." (Referring to plans for the valuation of railway property.) "Of the various methods of valuing railway property the one which seems the most reliable involves a complete and detailed inventory of both physical and non-physical value. The other methods which come into competition with the inventory methods are, 986 first: the acceptance of the book items, cost of road and cost of equipment, and such other items as appear on the assets side of the balance sheets as standing for the value of railway property, or, second: the acceptance of the market price of railway obligations as a measure of that value."

On page 30 the following: "The only plan which has thus far received the qualified approval of the courts is what is known as the stock and bond plan, that is to say, the valuation of corporate properties on the basis of the market quotation of their securities. Much may be said in favor of this method of valuation and much also against it.

Passing over minor considerations, two considerations suggest themselves which point to the inadvisability of placing an exclusive reliance upon the stock and bond plan of valuation. In the first place, what is sometimes called the rule of the Supreme Court for the valuation of railway properties, that is to say, the acceptance of the judgment of the market in the price it pays for stocks and bonds as a measure of value is a rule of nearly thirty years' standing, and much of the pertinency which it may have had between 1870 and

1880 is largely set aside by the conditions under which the great properties are now organized and operated. The purchase of individual for permanent investment is of small account compared with the purchase by syndicates for consolidation and control, and when it is recognized that the considerations which influence syndicates of capital in purchasing stocks and bonds differ widely from the considerations which influence an individual in determining the price he can afford to pay for an investment, it must be conceded that the market price of railway stocks and railway bonds is by no means a correct measure of the cash value of railways as that phrase  
987 is commonly used and as it is defined in statutory law.

The second reason why this rule fails to satisfy the requirements of a just valuation is that the great majority of railway stocks and railway bonds are not bought and sold upon the market. Two years ago this commission, in response to a resolution of the Senate, undertook to make a valuation of railway securities on the basis of market price of stocks and bonds; the following is quoted from the report made in response to this resolution: 'It may not be inappropriate as bearing upon the extent to which reliance can be placed upon the figures submitted to state the difficulties encountered in this computation; the chief difficulty was found in the fact that by far the larger proportion of railway securities are not subject to extensive purchase and sales and on this account fail to disclose the market price. This report deals with over two thousand corporations while the number whose securities were quoted on the stock market in such a manner as to enable a satisfactory computation of the value of the property which they represent in conformity with the rule embodied in the resolution did not exceed two hundred and twenty-five.

While market valuations of such securities as show a wide market may be of great use in checking values arrived at by other methods or in enabling a correct interpretation of commercial conditions, the commission does not hesitate to say as a result of this experience that that rule fails to justify a very great degree of confidence in the results to which it leads.

If an authoritative and trustworthy valuation of railway properties is to be arrived at the balance sheet, whether on the side of assets or liabilities, cannot be accepted as the starting point for an investigation.' "

988 I have investigated the market price of Michigan Central stocks and bonds for the year ending August 15, 1902, and conclude that those market quotations do not afford a criterion by which to measure the value of all the stocks of the Michigan Central road.

Every railroad corporation, if prosperous, possesses two elements of value, one in its physical property, the other in its franchise obtained from the State; in the term "franchise," I intend to include

all the elements which Mr. Adams enumerated as elements of non-physical value.

Q. If it be assumed that for purposes of taxation, the assessor should arrive at the valuation by computing the extent first of physical, and second, of franchise value, would it result in a separate valuation of corporation franchise?

Mr. KNAPPEN: I object to that as incompetent, and calling for a conclusion which is not a basis for expert testimony.

A. It is my understanding that that would be the case.

I have read Mr. Adams' testimony on the valuation of railway property before the industrial commission.

Q. Assuming the valuation of railroad property is to be determined by the inventory plan, supplemented by the capitalization of net corporate surplus, should it, in your judgment, be applied as he has applied it, in his testimony, in this case?

A. No, sir, I should apply it, with certain modifications, as he did in his report to industrial commission.

In applying this theory to the Michigan Central the following method seems to me equitable:

"First. The State should permit the company to make such expenditures from current earnings for betterments as may be necessary to keep the property abreast of technical development.

Second. From the average net earnings—the average gain 989 for a period of ten years—there should be deducted a percentage on the valuation of the physical property equal to at least four and a half per cent. plus the rate of taxation imposed on that property. For the year 1902 the total rate per cent. would have been 6 2-10.

Third. The net corporate surplus remaining after making the above deduction from the net earnings should be capitalized at not less than 6 per cent. plus the tax rate, or at 7 and 7-10 per cent in 1902."

I think cash and current assets (Report to State Board of Assessors, 1902, p. 31) ought not to be treated as a part of the physical valuation on which annuity is computed; these items are made up of cash, bills receivable, due from agents and other credits; which are fully offset by current obligations; materials and supplies on hand, I think should not be taxed until incorporated in the property.

(Witness handed Ex. 2, May 21, 1904, (stated by Mr. Butterfield to be a statement of charges, by Michigan Central Railroad Co., to operating expenses 1883 to 1903 inclusive, being such charges as would be classified as betterments or improvements under interstate commerce classification) also Ex. 3, May 21, 1904, (a similar statement for Canada Southern railway.)

I have examined both statements, and checked and taken off what, it seems to me, might properly be charged to capital, totalized

them for each year for both companies and added yearly totals to net earnings, before the payment of taxes.

The result for each year, for the Michigan Central system, including the Canada Southern, is :

Year.	Net earnings before payment of taxes, shown by company's books.	Michigan Central betterments from operating expenses, Exhibit 2, May 21, 1904.	Canada Southern betterments from operating expenses, Exhibit 3, May 21, 1904.	Total corrected net earnings for system.
1893.....	\$4,277,945 00	\$382,054 01	\$218,657 50	\$4,878,656 51
1894.....	3,825,199 00	32,317 81	5,803 06	3,863,319 87
1895.....	3,819,765 00	53,770 86	40,808 46	3,914,344 32
1896.....	3,795,402 00	66,687 47	20,808 93	3,882,898 40
1897.....	3,822,665 00	21,432 79	10,364 20	3,854,460 99
1898.....	3,952,953 00	39,827 26	13,958 62	4,006,738 88
1899.....	3,975,377 00	366,933 14	194,518 95	4,536,789 09
1900.....	4,017,865 00	140,847 10	105,495 40	4,264,207 50
1901.....	4,327,105 00	321,590 07	89,734 34	4,738,429 41
1902.....	4,187,813 00	416,151 13	140,718 41	4,744,682 54
Average for ten years.....				\$4,268,462 75
Michigan proportion, 68.5 per cent.....				2,923,896 98

On the physical property (\$43,151,815) I computed an annuity of 6.2 per cent. (4.5 per cent. plus average Michigan tax rate 1.7 per cent.) equaling \$2,775,374.15, this I deducted from Michigan proportion of the net earnings, which leaves \$248,522.83.

To determine the value of the franchise, I capitalized this at 7.7 per cent. (6 per cent. plus current tax rate) which gave value of the franchise as \$3,227,569, which, added to the appraised value of the physical property, gave for the valuation of the Michigan Central in Michigan for 1902, the sum of \$46,379,384.

I was influenced in adopting a rate of 4½ per cent. for the annuity by four considerations:

First, because I made additions to net earnings, consisting of certain amounts paid out of earnings for betterments. (Prof. Adams stated in his testimony that he was influenced to make rate 3½ per cent. because the company had charged considerable betterments to operating expenses;)

Second, a study of the average yield and selling price of good railroad bonds, 1893 to 1902;

Third, the selling and yielding price of high grade railroad stocks, 1893 to 1902;

Fourth, by the belief that the annuity should be somewhat above the rate a prosperous corporation must pay to secure money; I believe there should be a margin to cover the risks to which railway property is subject.

It seemed to me, that the reasons given in Prof. Adams' testi-

mony, for higher annuity on the Pere Marquette than the Michigan Central were sound.

Should it appear that the Pere Marquette, instead of charging to operating expenses items of permanent improvement, had charged to capital items of operating expenses, to make a valuation parallel with that outlined for the Michigan Central, it would be necessary to decrease net earnings to some extent.

Wherever in the Pere Marquette books I found items charged to capital which ought to have been treated as operating expenses, I would deduct those from net earnings.

Q. If on computation of the valuation of Pere Marquette system by the Adams plan as applied by you to the Michigan Central, it should appear that the annuity on the physical valuation is considerable more than the net earnings, what would be your conclusion on whether the physical valuation was a correct measure of the property's true cash value?

A. If your supposition were true, either the physical valuation or the rate of annuity would be unduly high; if the proper rate of annuity was used, it would indicate that the physical valuation was excessive.

Cross-examination by Mr. KNAPPEN:

In connection with the Carnegie Institution system, I have charge of the preparation of history of American commerce; my experience relates to transportation rather than finance; throughout the past eleven years, my studies on transportation have involved more or less study of railway finance; I do not wish to pose as a specialist, on railway finance, or taxation.

992 I have given no unusual amount of study to problems of finance, the stock market and railway taxation. The most fundamental objection to the stock and bond plan of valuation is the securities do not represent the value of the property. Assuming it to be over or under capitalized, the over or under capitalization is partially reflected in the market. A man, buying a stock or bond, considers the earnings of the company.

Q. Assuming that the market value of property is the basis of its assessment for taxation and that you could, from a comparison over a term of years, arrive at the market value of its stocks and bonds with a fair degree of certainty, wouldn't that be a fairly safe plan for valuing the property of a railroad?

A. No, sir. Not in the United States, as securities are not issued with reference to original investment; I understand the selling price of securities represents only the public estimate of those securities. The public properly estimates the value of the securities, but by so doing, does not necessarily or usually estimate value of the physical property of a railroad; it takes into account the earnings and various other things; a prudent intelligent investor studies the balance sheet.



Q. Doesn't it reasonably follow, assuming the investor to be prudent, that sales for purposes of investment fairly represent the prudent judgment of investor, that market value of stocks and bonds would fairly represent the property as a whole?

A. In order to reach that conclusion, it would be necessary to assume also that the number of transfers is sufficient to reflect the actual value.

The report of the Interstate Commerce Commission states that out of 2000 corporations, transfers for only about 225 were considered adequate; in the 2000 were included the corporations whose stocks were inactive.

The plan is on the whole unreliable; I would not draw the conclusion that it is not adapted for consideration in the case of any railroad. There are a few corporations whose bookkeeping has been such that one could determine from the balance sheet an accurate estimate of property's value.

(Under objection of, not proper cross examination, incompetent and irrelevant.)

I took the position in my book (American Railway Transportation, 1903) that the plan stated by Prof. Adams in his testimony before the industrial commission, was commendable; didn't give it unqualified approval, because I didn't take up its application.

(Mr. Knappen reads from page 93 of this book, as follows:)

"The solution of this difficult question seems to be found by taking into consideration both the cost of reproduction and the earning capacity in determining the basis of capitalization, and this method has been followed in a general way by numerous courts and commissions. Definite rules for applying this method were worked out by State tax commission in Michigan in 1900. In determining the value of the physical properties of the railroad, its road-bed, rolling-stock, terminals, etc.—the cost of duplication was made the basis of valuation. The railroad company's franchise, the special concessions granted to it by public authority and the special commercial opportunities upon which its business depended—that is to say, all the non-physical or immaterial elements of its property—were valued in accordance with their earning capacity. To ascertain the value to be attributed to these non-physical properties, a method suggested by Prof. Henry C. Adams was followed. According to the method devised by Professor Adams, the value of these immaterial properties, was determined—

1. By deducting aggregate expenses of operation from gross earnings and adding the income from corporate investments.

2. By deducting from the total income thus obtained an amount properly chargeable to capital—that is, a certain per cent. on the appraised value of the physical properties—rents paid for the lease of property operated and permanent improvements charged directly to income.



3. By capitalizing the remainder at a certain rate of interest. This method of values gives a basis for capitalization that seems to be equitable to all parties in interest; the public, the investor and the railroad company. The valuation thus determined also affords a fair basis for taxation."

(Under objection of incompetent, irrelevant and improper cross examination.)

A. The view held when I wrote that book, and that I now hold is that Prof. Adams' theory of valuation (as outlined in 1900) is sound in principle, and may be employed to secure equitable taxation of railroad property.

Whether equity will actually result depends on manner in which theory is applied and carried out in practice.

Q. In applying your plan to the Michigan Central properties for 1902, the difference in the methods of computation by yourself and Prof. Adams is that you :

First, took a ten year period of net earning instead of five ;

Second, took a 4.5 per cent. annuity, instead of 3.5 per cent., on the physical valuation ;

Third, added the anticipated tax for 1902 to the annuity ;

Fourth, capitalize the portion of earnings above the annuity on physical valuation at 6 instead of 5 per cent. ;

Fifth, add to that 6 per cent. the taxation on the property ;

995 Sixth, apply this taxation to the Michigan part only of the property, instead of getting the taxation paid by entire system, then taking percentage remaining for Michigan ;

Seventh, reject from the physical values cash and current assets ;

Eighth, make changes in amount chargeable to operating expenses.

A. I think you have correctly stated the plan I have outlined.

The ten year period embraces the entire of the panic years from 1893 to 1897.

I have had no personal experience with any railroad consolidation. My idea of taking the ten year period was not based upon practical experience, either in general business enterprises, or manufacturing, commercial or railway consolidations ; so far as I know, there are no records of business experience upon which one may draw ; if there are such, I don't know of them, and my adoption of the period is theoretical rather than practical.

In taking a 4.5 per cent. instead of a 3.5 per cent. annuity, I determined this by taking rates over the ten year period, and had calculations of the average selling price of representative bonds of the Michigan Central ; Illinois Central ; Chicago, Milwaukee & St. Paul ; Chicago & Northwestern. In three cases I had calculations showing the yield to the investor.

I also calculated the market value and yield to the investor of representative railway stocks of roads named and the Lake Shore from 1893 to 1902 inclusive. I find the average yield to the in-

vestor in Michigan Central 5's maturing 1931 (taking into account, the sinking fund to wipe out premium) to be 3.894 per cent.; those are the only Michigan Central bonds on which I have computation.

I made no computation of the rate netted to the investor during the five years preceding August 15, 1902, nor of the average rate to investor in Michigan Central bonds during the year ending the same date. The average yield to the investor in Michigan Central stocks, (taking into account premium) for ten years ending with 1902, is 4.02 per cent. I made no computation for the five years ending with 1902, nor for the year ending August 15, 1902. I have no opinion on whether the 1901 law suppressed Michigan Central values.

"Q. You understand that the 1902 stock and bond prices on Michigan Central properties were kept up until the general slump which occurred later in the year with reference to railway properties, generally, don't you?"

A. I think there was a general parallelism there."

I haven't taken up the question of whether there was any greater falling off with respect to the values and returns to investors in Michigan Central stocks and bonds during, and following, 1902 than with other railroads.

(Under objection of irrelevant.)

I haven't studied the question of how, previously to law of 1901, taxes paid by railroad companies in Michigan compared with those paid by other classes of property there. I have seen the statement that the previous system of taxation there made railway taxes less according to value, than upon property generally in the State.

I do not know the rate in Michigan for property generally for 1903 as compared with 1902, and have no knowledge sufficient to form the basis of testimony upon how property values, in Michigan, generally in 1903 compared with those of 1902.

I have not compared the Michigan Central with railroads of other States to ascertain whether previous to the year 1902, the Michigan Central added new equipment, extensions and improvements as fully as railroads in adjoining States.

(Under objection of irrelevant.)

My understanding is that the railway taxes would not be charged or appear in the records of the company until the check was written.

(Under objection of irrelevant.)

From 1899 to and including 1902 the trend of gross and net earnings was upward, so it would reasonably be anticipated, if that trend continued, that both net and gross earnings for 1903 would exceed those of 1902.

Q. I note on page 105 "American Railway Transportation" you say:

"A comparison of the freight revenue line on the chart with the line for operating expenses shows that when the earnings decline rapidly it is not possible to curtail operating expenses to an equal degree. Likewise, when there is a large increase in earnings the operating expenses, including large expenditures for betterments, do not rise with equal rapidity. A large business is relatively less expensive than a small one."

A. That is a correct statement. If you are going to make a comparison of values, you must take a period covering oscillations up and down, i. e. lean and fat periods. In the Adams plan the business of the following year or a series of years is anticipated only in so far as any system of taxation must recognize that periods of prosperity and depression alternate; no valuation at any time should be based upon a period of prosperity only; I base the capitalization of non-physical at 6 per cent. on my judgment.

998 "Q. That is, you haven't any particular proofs to sustain your judgment except the general opinion that you get in your mind?"

A. My statement is that no one would have any other basis than a judgment."

In the addition of the tax rate to the 6 per cent., I understand that the railroads of Michigan were assessed at 1.7 per cent. in 1902; I am referring to same taxation referred to in getting annuity rate for the capitalization of physical elements. It is subject to the same considerations. The difference between myself and Prof. Adams is that he has taken out the average taxes actually paid for five years, while I make use of the rate of assessment for the year under consideration.

I assume the taxes are paid early in 1903 for 1902, and would come out of recent earnings—those for 1902. The only calculation I made was that given in direct testimony.

In determining rate, I ascertained the actual (not the weighted, and without reference to bulk of transaction) average yield to the investors for stocks and bonds for ten years for a limited number of representative companies.

Every well managed railroad is obliged to carry a cash balance and have to have materials and supplies on hand; they are property; materials and supplies become devoted to railroad purposes when incorporated in the property; they are on hand as property intended for railroad purposes.

My information in respect to operating expenses of Michigan Central system is only what is in Exhibits 2 and 3, May 21, 1904.

In correcting the operating expenses, have left in them additional equipment, locomotives and cars and have taken out expenditures for additional trackage, side tracks, sidings, and land. The result is the effectiveness of the equipment of the road for performing the work of transportation has increased year by year out of operating

expenses; its effectiveness in matter of earnings depends on the rate and the cost of the conduct of transportation; assuming the rates have not decreased, the result is, that according to this system, the earning capacity of road would be increased; every road, during the period from 1898 to 1902, should have increased its power 1000 to secure net earnings. It is an established principle of railway policy that a railroad strengthens itself during years of prosperity and lives on its fat during the years of depression; the tendency among railroads has been to strengthen the future earning capacity and increase the value of the property by paying for equipment, improvements, and a certain amount of construction out of earnings. The result of the system followed by the Michigan Central in that regard is to give a better and more economical service; the earning capacity of the Michigan Central is favorably affected by betterments which have been included in operating expenses and the economies resulting therefrom; during last five years it has been on the up-grade.

Its increased prosperity and earnings are due in a large part to improvements which have been paid for out of operating expenses. You add to value of the property in fat seasons, creating a surplus as a bank does out of its earnings, in good times; every railroad has to prepare for periods of depression. The influence of conditions resulting from charging to operating expenses this class of improvements, is temporary in that railroads do not have the means to make these expenditures during depressions, but is permanent if the property is not dragged to as low a level by next period of depression as by previous one.

Q. In your book "American Railway Transportation" (p. 105) after saying the earnings of railroads have been favorably affected by betterments and resultant economy of previous years, you state in 1897 a freight train's load was 204 tons, in 1900, 271 tons, and 1901, 281 tons, and that average freight train earnings per mile in 1897, \$1.65; 1900, \$2.00; 1902, \$2.132.

A. These figures are correct,—taken from official report.

Q. You follow that statement by this:

"While both the train load and the earnings have been favorably affected during the last few years because of the large volume of traffic they are none the less due to improvements in track, equipment and management, whose influence on earnings will be permanent."

1001 A. I have no reason to change any former statement there.

I have found it to be a fact for a number of years past that profits to stockholders have been restricted in order to strengthen future earning capacity and earning of the property. Speaking from memory, the decline in freight rates and charges terminated in 1900.

From then to 1902 there was a little advance; freight rates constitute bulk of railway earnings; this policy would favorably affect the general earnings. The earnings of the railroad may be increased

with respect to freight by a direct raise in rate or an increase in traffic as pointed out by Prof. Adams. The same result would be affected by a transfer in respect to classification, rates might remain same and earnings be greater by a change of classes into which divided. Regard information on this subject printed by Interstate Commerce Commission as authority.

The table on page 106 of "American Railway Transportation" entitled "Comparative condensed income account per mile of line operated for the years ending June 30, 1901 to 1891" is transcribed directly from the statistics of the Interstate Commerce Commission.

(Under objection of irrelevant.)

The net income from operation was, per mile of line operated, as follows:

1891 .....	\$2,282.00
1892 .....	2,404.00
1893 .....	2,314.00
1894 .....	1,946.00
1895 .....	1,967.00
1896 .....	2,072.00
1897 .....	2,016.00
1898 .....	2,325.00
1899 .....	2,435.00
1900 .....	2,729.00
1901 .....	2,854.00

The result aside from the panic years, has been a steady increase in the net income from operation.

#### Redirect examination:

The expenditure of money for keeping the property abreast of technical development does not necessarily result in increased net earnings, the object of company in making betterments is to make sure its ability to maintain net earnings at a desirable point. Various forces affect net earnings; if it be assumed that expenditures for betterments have only kept the road abreast of technical requirements and that it has not been possible to increase dividends, the evidence would be that property is not more valuable.

1002

GEORGE E. COMSTOCK, sworn for complainant.

#### Direct examination:

I reside in Detroit; have been for eight years clerk in office of the auditor of the Michigan Central railroad. Exhibits 2 and 3, May 21, 1904 are part of the files of that office. Carbon copies of statements of so-called betterments charged to operating expenses are made up every six months for the information of the Canada South-

ern officials. Exhibit No. 2 covers the Michigan Central portion of the property from 1883 for 21 years. Exhibit No. 3 a corresponding statement for the same period of improvements or so-called betterments charged to operating expenses on account of the Canada Southern portion of the road. This is the only record in the office of the Michigan Central of the information it purports to contain.

(So much of Exhibits 2 and 3 as covers from 1893 to 1902 inclusive offered in evidence.)

(Subject to objection of incompetent and immaterial.)

Cross-examination by Mr. TOWNSEND:

I had nothing to do with the preparation of these statements or the matters set out in them, and do not know of my own knowledge whether they are correct statements; they are made from statements furnished by the various departments. It is the only record of so-called betterments ever made up, and is made for the benefit of the Canada Southern officials.

(Mr. TOWNSEND: We move to strike out the testimony given by Mr. Comstock, on direct examination, as incompetent and hearsay, and not properly proven.)

Redirect examination:

The Michigan Central had an agreement by which it operated the Canada Southern; on request of the officials of that company those statements were prepared to show, for their information, the amount expended in betterments on account of Michigan Central portion of the property, and also on account of the Canada Southern.

Under that agreement, which was in writing,—

(Objected to by Mr. Knappen as not the best evidence.)

(Continuing:)—the Canada Southern received payment, by voucher every six months. For the last several years it received 40 per cent. of the net income, after taking out the operating expenses and fixed charges. The operating road determined what money should be paid out for operating expenses and improvements.

"Q. So I take it from that it became important for the Canada Southern to be advised whether there had been a fair division of the expenditures which might be called improvements between its road and the Michigan Central?"

A. I suppose that is the reason that they asked for this information.

Q. You do not know that they asked for the information?

A. Yes, sir.

Q. That was in response to this request that this information was given?

A. Yes sir, and for no other purpose were these statements prepared."

## Recross-examination :

I know that these statements were given to advise the 1004 Canada Southern whether there had been a fair division of expenditures as they have been discontinued since the new lease with the Canada Southern went into effect; they were made up on the request of Canada Southern officials; not for the Michigan Central.

The Canada Southern obtained 40 per cent. of the net income after deducting, from earnings, operating expenses and fixed charges; those statements are betterments, so-called, charged to operating expenses, which were deducted and the remainder divided in the proportion of 40 to 60.

The annual report shows the total operating expenses, which include these items. These exhibits show betterments charged to operating expenses. There have been betterments charged to construction.

(Offer of Exhibits 2 and 4 renewed.)

1005 Recapitulation of Exhibits 2 & 3, May 21, 1904.

## Michigan Central Railroad.

The statements of betterments are headed as follows :

"Statement of Betterments to Michigan Central Properties Charged to operating Expenses."

The recapitulations of the statement of betterments for each six months are as follows :

Six Months Ending June 30, 1893.

## Recapitulation.

Locomotive department.....	7,696.22	
Car department.....	69,651.95	
Building department.....	58,729.34	
Track department.....	117,174.11	
Accounting department.....	40,000.00	
		<hr/> 293,151.62

Six Months Ending December 31, 1893.

## Recapitulation.

Locomotive department.....	209,520.08	
Car department.....	75,600.03	
Building department.....	61,879.51	
Track department.....	168,550.85	
Accounting department.....	52,000.00	
		<hr/> 567,551.37



## For Six Months Ending June 30, 1894.

## Recapitulation.

Locomotive department.....	1,422.60	
Car department.....	551.00	
Building department.....		
Track department.....	28,504.68	
		30,578.28

## Six Months Ending December 31, 1894.

## Recapitulation.

Locomotive department....	2,826.40	
Car department.....		
Building department.....	16,896.31	
Track department .....	68,361.06	
		86,083.77

## Six Months Ending June 30, 1895.

## Recapitulation.

Locomotive department.....	1,590.60	
Car department.....	13,907.93	
Building department.....	14,930.42	
Track department.....	58,164.08	
		88,593.03

## Six Months Ending December 31, 1895.

## Recapitulation.

Locomotive department.....	4,250.72	
Car department.....	34,042.71	
Building department.....	23,198.79	
Track department.....	69,174.73	
		130,666.95

1006

## Six Months Ending June 30, 1896.

## Recapitulation.

Locomotive department.....	4,435.95	
Car department.....	89,956.39	
Building department.....	27,185.64	
Track department.....	40,638.75	
		162,217.73

## Six Months Ending December 31, 1896.

## Recapitulation.

Locomotive department.....	5,009.07	
Car department.....	40,955.93	
Building department.....	29,090.33	
Track department.....	96,033.29	
		171,088.62

## Six Months Ending June 30, 1897.

## Recapitulation.

Locomotive department.....	3,781.82
Car department.....	43,395.00
Building department.....	3,576.70
Track department.....	38,662.49

89,662.02

## Six Months Ending December 31, 1897.

## Recapitulation.

Locomotive department.....	5,690.34
Car department.....	47,675.26
Building department.....	7,978.20
Track department.....	73,981.93

135,325.73

## Six Months Ending June 30, 1898.

## Recapitulation.

Locomotive department.....	5,842.16
Car department.....	35,600.38
Building department.....	1,819.61
Track department.....	71,369.22

114,631.35

## Six Months Ending December 31, 1898.

## Recapitulation.

Locomotive department.....	4,203.86
Car department.....	18,186.00
Building department.....	36,604.44
Track department.....	162,441.73

221,436.03

## Six Months Ending June 30, 1899.

## Recapitulation.

Locomotive department.....	3,920.00
Car department.....	8,920.00
Building department.....	24,654.12
Track department.....	61,087.95

97,980.39

## Six Months Ending December 31, 1899.

## Recapitulation.

Locomotive department.....	12,657.39
Car department.....	296,424.12
Building department.....	53,770.42
Track department.....	176,842.13

539,694.06

1007

Six Months Ending June 30, 1900.

Recapitulation.

Locomotive department.....	6,521.40	
Car department.....	25,413.56	
Building department.....	20,803.16	
Track department.....	127,087.48	
		<u>179,825.60</u>

Six Months Ending December 31, 1900.

Recapitulation.

Locomotive department.....	9,914.52	
Car department.....	54,980.00	
Building department.....	85,867.07	
Track department.....	258,913.79	
		<u>409,675.98</u>

Six Months Ending June 30, 1901.

Recapitulation.

Locomotive department.....	10,943.08	
Car department.....	20,308.49	
Building department.....	16,249.76	
Track department.....	200,321.11	
		<u>247,822.44</u>

Six Months Ending December 31, 1901.

Recapitulation.

Locomotive department.....	6,858.04	
Car department.....	27,524.12	
Building department.....	96,040.91	
Track department.....	483,798.11	
		<u>614,221.18</u>

Six Months Ending June 30, 1902.

Recapitulation.

Locomotive department.....	3,207.35	
Car department.....	15,702.23	
Building department.....	120,052.77	
Track department.....	340,992.93	
		<u>479,955.28</u>

Six Months Ending December 31, 1902.

Recapitulation.

Locomotive department.....	13,823.18	
Car department.....	61,250.67	
Building department.....	86,403.98	
Track department.....	294,026.59	
		<u>455,504.42</u>

The statement of additions is headed as follows: "Statement showing additions made to Michigan Central equipment and charged to operating expenses, January 1, 1883 to December 31, 1893," and is as follows:

Year.	No.	Class.	Cost.
1883	42	Log trucks.....	\$2,100.00
1884	1	Snow plow.....	1,357.38
"	2	Baggage & express.....	4,319.96
1885	2	Baggage.....	3,746.68
1008			
1885	1	Derrick.....	1,270.77
"	1	Transfer car.....	5,000.00
"	1	Log machine.....	385.00
1886	1	Snow plow.....	1,206.00
"	2	Baggage.....	4,150.00
"	1	Railsaw.....	7,500.00
1887	65	Stock.....	34,800.00
"	1	Pile driver.....	4,300.00
"	1	Steam shovel.....	6,200.00
"	33	Boxes.....	17,325.00
"	100	Flats.....	39,500.00
1888	1	Steam shovel.....	6,200.00
"	1	Steam shovel.....	6,200.00
1889	3	Mail.....	13,500.00
"	1	Official (pres't).....	13,500.00
"	392	Flats.....	133,280.00
"	64	Stock.....	36,480.00
"	1	Wrecking.....	9,300.00
"	1	Steam shovel.....	6,100.00
1890	2	Baggage.....	7,067.62
"	2	Dining.....	30,370.30
"	3	Mail.....	13,500.00
"	44	Stock.....	25,982.00
1891	90	Stock.....	53,145.00
"	134	Furniture.....	80,400.00
"	197	Boxes.....	128,164.00
"	66	Refrigerator.....	64,350.00
1892	136	Boxes.....	85,672.00
"	26	1st class pass'ng'r.....	161,608.42
"	2	Horse express.....	6,752.34
1893	2	Dining.....	34,124.54
"	1	Buffet.....	12,699.44
"	2	1st class pass'ng'r.....	12,808.34
"	6	Baggage & express.....	15,638.06

---

1431

---

1,087,863.05

## New Locomotives.

		Cost.	
1867 Schenectady locomotive- num- bered 272, 273, 274, 275, 276...	5	53,295.00	
1888 Schenectady locomotives num- bered 277.....	1	10,760.00	
D. B. C. & A. locomotives num- bered 278, 279.....	3	14,000.00	
1889 Schenectady locomotives num- bered 280, 281, 282, 283, 284..	5	49,138.00	
1892 Schenectady locomotives num- bered 285, 286, 287, 288, 289 290.....	6	62,588.52	
1893 Schenectady locomotives num- bered 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510.....	20	205,282.36	
			395,053.88
Grand total.....	39		1,482,916.93

## 1000 Canada Southern.

The statements of betterments are headed as follows :

"Statement of betterments to Canada Southern properties charged to operating expenses."

The recapitulation of statements of betterments for each six months are as follows :

## Six Months Ending June 30, 1893.

## Recapitulation.

Locomotive department .....	5,766.61	
Car department .....	41,721.27	
Building department .....	5,916.66	
Track department .....	76,581.29	
		129,987.93

## Six Months Ending December 31, 1893.

## Recapitulation.

Locomotive department .....	156,650.85	
Car department .....	43,416.94	
Building department.....		
Track department .....	94,394.34	
		294,461.63

## Six Months Ending June 30, 1894.

## Recapitulation.

Locomotive department .....	557.50	
Car department .....	1,386.90	
Building department .....	2,053.95	
Track department .....	20,023.28	
		<hr/>
		24,021.63

## Six Months Ending December 31, 1894.

## Recapitulation.

Locomotive department .....	328.00	
Car department .....	3,221.40	
Building department .....	4,049.63	
Track department .....	22,499.86	
		<hr/>
		30,098.89

## Six Months Ending June 30, 1895.

## Recapitulation.

Locomotive department .....	378.00	
Car department .....	4,648.20	
Building department .....	1,205.45	
Track department .....	8,051.54	
		<hr/>
		14,283.19

## Six Months Ending December 31, 1895.

## Recapitulation.

Locomotive department .....	378.00	
Car department .....	10,935.90	
Building department .....	7,537.40	
Track department .....	68,354.68	
		<hr/>
		87,205.98

1010

## Six Months Ending June 30, 1896.

## Recapitulation.

Locomotive department .....	237.00	
Car department .....	27,578.40	
Building department .....	2,980.65	
Track department .....	40,272.15	
		<hr/>
		71,068.20

## Six Months Ending December 31, 1896.

## Recapitulation.

Locomotive department .....	5,259.60	
Car department .....	22,545.50	
Building department .....	10,240.03	
Track department .....	32,300.85	
		<hr/>
		70,345.98

## Six Months Ending June 30, 1897.

## Recapitulation.

Locomotive department .....	1,981.69	
Car department.....	24,438.00	
Building department.....		
Track department.....	11,841.37	
	<hr/>	38,261.06

## Six Months Ending December 31, 1897.

## Recapitulation.

Locomotive department .....	7,463.21	
Car department .....	24,132.30	
Building department.....	8,602.37	
Track department .....	47,983.96	
	<hr/>	88,181.84

## Six Months Ending June 30, 1898.

## Recapitulation.

Locomotive department .....	1,539.00	
Car department .....	14,021.00	
Building department.....	2,469.97	
Track department .....	17,495.89	
	<hr/>	35,525.86

## Six Months Ending December 31, 1898.

## Recapitulation.

Locomotive department .....	3,976.72	
Car department .....	12,194.00	
Building department.....	2,500.00	
Track department .....	47,538.67	
	<hr/>	66,209.39

## Six Months Ending June 30, 1899.

## Recapitulation.

Locomotive department .....	1,931.20	
Car department .....	9,044.00	
Building department.....	9,142.80	
Track department .....	44,757.90	
	<hr/>	64,875.90

## Six Months Ending December 31, 1899.

## Recapitulation.

Locomotive department .....	11,668.60	
Car department .....	170,730.00	
Building department.....	8,644.14	
Track department .....	169,599.58	
	<hr/>	360,642.32



1011

Six Months Ending June 30, 1900.

## Recapitulation.

Locomotive department.....	3,436.30	
Car department.....	9,870.17	
Building department ( <i>nil</i> ).....		
Track department.....	7,803.14	
	<hr/>	21,109.61

Six Months Ending December 31, 1900.

## Recapitulation.

Locomotive department.....	5,263.27	
Car department.....	26,145.86	
Building department.....	12,147.36	
Track department.....	151,855.34	
Can. & Mich. Bridge & Tunnel Co .....	12,500.00	
	<hr/>	207,911.83

Six Months Ending June 30, 1901.

## Recapitulation.

Locomotive department.....	3,406.95	
Car department.....	8,436.43	
Building department.....	34,022.23	
Track department.....	270,243.04	
	<hr/>	316,208.65

Six Months Ending December 31, 1901.

## Recapitulation.

Locomotive department.....	4,293.87	
Car department.....	23,040.00	
Building department.....	17,773.49	
Track department.....	183,692.38	
	<hr/>	228,799.74

Six Months Ending June 30, 1902.

## Recapitulation.

Locomotive department.....	791.21	
Car department.....	7,775.00	
Building department .....	10,022.74	
Truck department.....	42,374.07	
	<hr/>	60,963.02

Six Months Ending December 31, 1902.

## Recapitulation.

Locomotive department.....	8,252.44	
Car department.....	38,009.95	
Building department.....	37,403.02	
Track department.....	379,354.66	
	<hr/>	463,020.27

The statement of additions is headed as follows: "Statement showing additions made to Canada Southern equipment and charged to operating expenses, January 1, 1883 to December 31, 1893," and is as follows:

## New Cars.

Year.	No.	Class.	Cost.
1883	6	Second class.....	20,030.06
"	1	Derrick ....	7,447.01
1884	1	Combination .....	2,762.19
1012			
1884	1	Express.....	1,705.54
1885	1	Combination.....	2,445.68
"	1	Baggage.....	1,152.50
1886	1	Baggage.....	2,075.00
1887	10	Way .....	6,330.00
"	1	Combination .....	2,500.00
"	17	Box.....	8,925.00
"	85	Stocks .....	43,690.00
1888	1	Combination .....	2,810.00
1889	1	Dining (T. C. S. & D.)...	9,500.00
"	36	Stocks.....	20,520.00
"	8	Flats.....	2,720.00
1890	1	Buffet (T. C. S. & D.)...	22,853.32
"	1	Baggage.....	3,533.66
"	22	Stocks .....	12,991.00
1891	100	Flats.....	51,371.50
"	44	Stocks.....	25,982.00
"	66	Furniture .....	39,600.00
"	34	Refrigerator .....	33,150.00
"	94	Box.....	60,382.00
1892	73	Box .....	50,407.50
"	13	1st class passenger.....	81,797.64
"	1	Horse express .....	3,376.17
1893	2	Buffet.....	25,500.44
"	1	1st class passenger.....	6,404.17
"	3	Baggage & express.....	8,297.00
"	1	Steam shovel.....	7,150.00

628

567,410.38

## New Locomotives.

		Cost
1887 Kingston locomotives, numbered 426, 427, 428.....	3	28,500.00
1888 D. B. C. & A. locomotives, numbered 436 and 437.....	2	14,000.00
1889 Schenectady locomotives, numbered 431, 432, 433, 434, 435..	5	65,392.60
1892 Schenectady locomotives, numbered 438 and 439.....	2	26,889.90
1893 Schenectady locomotives, numbered 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451	12	
		<hr/>
		287,486.95
	<hr/>	
	24	854,897.33

1013 GEORGE H. RUSSEL, sworn for complainant.

Direct examination by Mr. BUTTERFIELD :

I reside at Grosse Point Farms ; have been president for 15 years of the State savings bank, by far the largest bank in Michigan ; my previous occupation, manufacturing. I have given to the bank my almost undivided attention for 15 years.

(Under objection of incompetent for the reason that witness has not shown himself an expert on this subject.)

To arrive at the value of the property of a railroad company, by the capitalization of average net earnings over a period of years, after deducting operating expenses, taxes and proper maintenance, I should capitalize at not less than 6 per cent. with proper allowance for future contingencies.

There is no material difference in the rate in last two years ; there would be in 10 or 12 years.

Q. In making such estimate, over what period of years would you wish to have an average taken ?

Mr. KNAPPEN : That is objected to for the same reason. I wish also to object to this question and to the preceding one on the ground that it is immaterial and for the special reason that it does not distinguish between different railroads and is entirely general in its nature.

A. I would wish it to extend to a duller period, from 10 to 20 years, embracing all conditions that would exist in that period.

Q. What, in your opinion, has the net yield to the investor to do with the question of what rate should be used in capitalizing net earnings to find the value of the property of a railroad company ?

Mr. KNAPPEN : That is objected to for the same reason.

The capitalization should be, to my mind, the cost; the return would be considered from a point of view of investment; I do not see what the result has to do with the capitalization of a rail road.

1014 When I fix a 6 per cent. rate I do not consider what Michigan Central bonds would sell for in Wall street, I would not consider Wall street at all in the West.

Q. In a railroad (with net earnings at the expense of the maintenance of the property), where the expenditures for permanent improvements had not been sufficient to maintain the property and keep it abreast of technical development, would you use a higher rate in capitalizing to find value?

A. I would not capitalize it above its worth on its stock issued. I would use a very much higher rate in such case, depending on the degree to which they had failed to keep the property up and its future prospects.

In considering the real value of collaterals, I have from time to time had occasion to estimate the value of property of manufacturing and other corporations, and to consider at same time the management.

#### Cross-examination by MR. KNAPPEN:

My brother, Henry Russel, is general attorney of the Michigan Central. I would regard Michigan Central stock, paying 4 per cent., better as collateral than manufacturing stock paying 4 per cent. Would not buy manufacturing stock unless it paid more than 4 per cent. under ordinary approved management.

It would not be a safe investment. Manufacturing stock has to bring higher rates to compensate for bad years and use; I would not buy manufacturing stock individually nor accept the collateral unless it showed 10 per cent. or better. Michigan Central stock bearing 4 per cent. would be regarded as good collateral for a present loan, at a margin of 10 to 20 per cent. I would not discriminate against railroad stocks of the class of the Michigan Central more than against ordinary bank stocks; a 3.5 per cent. Michigan Central bond would be good collateral with a margin 9, 10 to 15 points—for a definite period. But not at the rate it bears. I would not regard stock of bank in business 20 years, earning 6 and paying 4 per cent.

1015 as worth par. I base opinion that net earnings of a railroad should be capitalized at not less than 6 per cent. on question of the present and future; if it doesn't earn at least 6 per cent. net, times are likely to come when it will not begin to earn that much; if you buy for investment, you buy for a period of years. I would not take the stock for a continued period, as collateral, unless it showed a better result than 6 per cent. I have had no experience in estimating the value of railroad property, except to compare the cost and worth per mile in investigating their values have never figured out how much Michigan Central valuation would show up on basis

of 6 per cent. net above taxation; have never bought Michigan Central bonds,—they have an artificial value.

We had Michigan Central bonds at one time; familiar with values of bonds of railroads in the Middle and Eastern States generally, as compared with Michigan Central; a limited number of bonds are acceptable under conditions of New York and New England banking laws, as investment for mutual savings banks having no capital, they have had to increase that list from time to time, as there were not enough for the forced investments of those banks.

Northwestern bonds come under the same classification as the Michigan Central; when I say Michigan Central has a special value, I mean all bonds designated as legal investment for New England banks would come under that class; Michigan Central is so designated.

I do not know the net return to investor for 1901 and 1902 in Michigan Central bonds (though it was quite low, suppose about 3.5 per cent.) Chicago, Milwaukee & St. Paul or Illinois Central bonds.

Bonds of the Chicago & Northwestern and Southern Pacific 5's were bought in 1902 by the bank at 3.5 per cent. basis.

A bank stock, with greater chances of loss by panic, ought to earn and accumulate more (about 4 per cent.) against bad times than railroad. In my mind, a railroad stock, no matter how strong or carefully managed, if it didn't earn net, available for dividends, 6 per cent., would not be worth par; it might sell above par temporarily.

I don't think the market value of the stocks and bonds of a railroad is a real criterion of its true value; have never bought a railroad, though have seen them bought, traded in, and built, and known of their operation.

I have never given any special or particular study to the subject of railway values; banking has much to do with investigation of securities and the values.

I have not had experience in capitalizing the net earnings of railroad companies, which leads to a period of 10 or 20 years as proper; railroads generally prosper and increase their earnings over periods of years, and as they increase their business, they have to reduce their rates and haul much more stuff.

I am not familiar with statistics regarding those subjects, but have an idea that from period to period, as the land becomes settled and more business comes to it, there is a general increase in earnings and a decrease in rates.

The business of a manufacturing concern likewise accumulates; the cases are a good deal parallel, as they establish their name and good-will and out of profits, keep abreast of the times and have better machinery, their business increases in about same proportion as a railroad's, both suffering in depressed conditions and periods; am not a special student on that subject, and have no statistics in mind.

I never had occasion to compute the value of a railroad based on

net earnings, would not get at it in that way; I don't believe in the theory of estimating the value of a road by capitalizing its present earnings; the most that would do, would be to fix the present value under the present management.

Think the only value of a thing is its inventory value; of a railroad, it would be the value of its tangible physical property; no railroad has any value in excess of its physical property, because anything above that is dependent upon conditions of the times and the management and is capitalization of the brains that manage it; I do not wish to be understood as saying that from 1890 to 1901 or 1902 there has been any decrease in freight rates.

The last 5 years have been years of progressive prosperity, and the railroads didn't have facilities enough to do the business offered. When I said, with the increase of railroad business from year to year, rates have generally gone down, did not mean it was so in last 5 years.

ELWOOD T. HANCE, sworn for complainant.

Direct examination by Mr. BUTTERFIELD:

I reside in Detroit; am vice president and treasurer of the Union Trust Co., as such am managing and executive officer (for eleven years), previously lawyer and postmaster of Detroit.

As managing officer of the Trust Co. have had occasion to estimate value of various kinds of property, including nearly all kinds of corporations,—gas companies, electric and steam roads.

Q. Assuming you are to determine value of the property of a steam railroad by capitalization of its average net earnings for a period of years; you are presented with net earnings, after the payment of taxes and operating expenses large enough to maintain property against depreciation and keep it abreast of technical development, what rate would you use for capitalization?

Mr. KNAPPEN: That is objected to as it does not appear that witness is sufficiently expert to give an opinion in answer to it.

A. Eight per cent. I should desire to investigate in making up the average, a minimum period of ten years and preferably longer. The net yield to the investor in securities of a steam railroad has practically nothing to do with question of what is a proper rate to use in capitalizing the net earnings to arrive at value of its property.

There is no difference in the conditions between 1902 and the present to change the rate. If a railroad company with net earnings had not maintained its property against depreciation and charged sufficient to operating expenses to keep it abreast of technical developments, I would use higher rate of capitalization.

## Cross-examination by Mr. KNAPPEN :

Among directors of the Union Trust Co. are W. C. McMillan, brother of Mr. McMillan of Wells, Angell, Boynton & McMillan, and Henry Russel, general attorney of the Michigan Central, Mr. H. G. Ledyard, president of the Michigan Central, and Henry Russell are directors of State savings bank; I have not had extended experience in capitalizing railroad companies on the basis of net earnings; we underwrote and placed the bonds of, and capitalized the Manistique, Marquette & Northern, a road 50 miles long, on the basis of what it had earned over a period of 12 or 15 years.

This road runs from Manistique to Shingleton, in the Upper Peninsula and does a freight business, principally of forest products and some mineral; it had earned 12 per cent. over a period of about 12 years; we capitalized earnings at 12 per cent., for total bond issue,—the stock cost nothing. That is extent of my attempt to capitalize the net earnings of steam road.

This road, when the timber is cut off, would not be likely to be as valuable as now, the traffic becomes less dense and less valuable as years go by; we (Union Trust Co.) bought Michigan Central 3.5 per cent. bonds for 96, within a week; bought some of the 1902 issue in 1902 at about 3.5 per cent. rate.

At 96 the 3.5 per cent. the bond would net the investor 3.65 1019 or 3.67 per cent.; the 15 cents difference about represents difference in money in 1902 and now.

I don't know whether the large steam roads of the country capitalize on the basis of net earnings, or the rate taken; or the dividends the Michigan Central has been paying for the last several years; or what it has been earning or anything about technical railroad development.

The present market value of the Union Trust Co.'s stock, paying 6 per cent. and taxes, is \$225. per share, netting investor something less than 3 per cent.; it has a capital stock of \$500,000, surplus \$250,000 and undivided profits \$218,000.

The Detroit Trust Co.'s stock, according to quotations, is worth 216, it pays dividends of 6 per cent. and nets investor less than 3 per cent.; its capital stock is \$500,000, surplus \$500,000 and undivided profits about \$200,000.

The State Savings Bank stock has a market value of \$200 plus and pays, I think 6 per cent. above taxes; in neighborhood of 3 per cent. net to the investor; it has a capital stock of \$1,000,000, surplus \$750,000 and undivided profits \$100,000.

(Objected to as incompetent, irrelevant and not proper cross-examination.)

Stocks of profitable, progressive Detroit banks are generally selling at prices which net the investor not over 3 per cent. above taxes there being no material variation in 1901 and 1902.

In the valuation of steam railroad, I do not regard the capitaliza-



tion of net earnings as safe criterion of value. When I said return to investor had practically nothing to do with capitalization rate, I did not mean that I did not have much confidence in stock and bond method of valuation. An investor buying stock takes into consideration the earnings and management. The Union Trust Co. in investing trust funds buys railroad bonds; and has bought 3.5 per cent. Michigan Central bonds; it has never bought any stocks.

It does not invest the money of its beneficiaries in manufacturing business; it is more conservative than banks and loans within 20 to 25 per cent. of market value on stock collateral; apart from the Manistique, Marquette & Northern I have had no experience in determination of proper period over which net earnings on steam rail roads should be considered.

I know nothing about the practice, with respect to capitalization of earnings of steam roads as to the period taken. Would want to use rate of at least 8 per cent. for capitalization; think this method of getting at the value is wrong, and this is true also of gas companies and other corporations. I do not speak of 8 per cent. because I think the investor in road expects return of 8, do not take that into account; the rate I fix is higher than the rate for the use of money temporarily.

In 1902 we got 5 per cent. on long time loans and not as much on investments in railroad bonds; I think in 1902 railroad bonds were selling at prices to net the investor 3.5, 3.75 and 4 per cent. and we bought this class of bonds considering them good safe investments.

1021 TRUMAN H. NEWBERRY, sworn, for complainant.

Direct examination by Mr. BUTTERFIELD:

I reside at Detroit, and am manager of the Newberry estate, and actively connected with the Detroit Steel Casting Co., the Railway Steel Spring Co., Parke, Davis & Co., and the Packard Motor Car Co. I am director of the State savings bank and the Union Station & Depot Co., a director and member of the executive committee of the Union Trust Co., vice president and member of the executive committee of the Michigan State Telephone Co.

Q. In arriving at the value of the property of a railroad company by capitalization of its average net earnings for a period of years; given the net earnings after payment of taxes and charging to operating expenses sufficient to maintain the property against depreciation and keep it abreast of technical development, what would be a proper rate to use in capitalizing?

Mr. KNAPPEN: That is objected to for reason that it does not appear by examination of witness that his experience has rendered him competent to give answer to that question.

A. I would take 10 per cent. as the basis to arrive at valuation of railroad, or any other manufacturing proposition.

Mr. KNAPPEN: That is objected to for reason that it does not appear by examination of witness that his experience has rendered him competent to give answer to that question.

(Continuing:) In ascertaining average would desire to consider at least ten years.

Mr. KNAPPEN: That is objected to for reason that it does not appear by examination of witness that his experience has rendered him competent to give answer to that question.

(Continuing:) The net yield to investors in securities of a railroad company would not be a fair basis by which to arrive at the railroad's value; so many other things enter into the market  
1022 quotations, that would not appeal to an individual, in arriving at its value, that they would not be an index of its value.

In 1902 I would have used a higher rate than 10 per cent. I have had occasion to invest, and advise in the investment of considerable sums of money; such experience extending over 17 years; have had occasion to estimate the value of a large property several times; in one case where we sold our interest in a corporation, worth about a million and a half we took an average of 17 years and we sold on a 6 or 7 per cent. basis.

#### Cross-examination by Mr. KNAPPEN:

This was a manufacturing corporation doing business in Detroit and in 1888 we capitalized its earnings on 6 per cent. basis for purpose of selling our interest.

I never had any experience in valuing steam railroad property as an appraiser, but have in organizing them, being an agent sometimes in helping to finance.

I am a stockholder in the Chicago & Northwestern, Chicago, St. Paul, Minneapolis & Omaha, and indirectly through the Cleveland Cliffs Co., in the Manistique & Southwestern.

I have been in two or three underwritings of several railroads; helped to finance the Detroit, Bay City & Alpena, in 1887 and 1888; its bonds bore 6 per cent. interest, and were taken by New York broker at about 92 or 95.

All there was of saleable value was the bonds, and it defaulted upon its mortgage, which was foreclosed. I participated in underwriting the Manistique, Marquette & Northern, a logging road; it was anticipated that after the forest products — removed the lands would develop into farming land. The earnings would decrease after timber was gone; my connection with this road was through the Union Trust Co.

I helped no other roads to finance; think there was a sinking fund in both the cases mentioned. They get larger  
1023 return, per dollar of investment, today on high class railroad stocks and bonds than in 1902.

I have held a little Chicago & Northwestern stock 17 years; think the dividend is 5 or 6 per cent.; presume it sells now between 150 and 170 and in 1902 about 200; held stock in Chicago, St. Paul, Minneapolis & Omaha for about 17 years. Now pays 5, 6 or 7 per cent. dividends; the stock, I believe is controlled by the Northwestern; think the quotations about 110. Today you could get plenty of high class railroad bonds at 4 per cent.; in 1902 as low as  $3\frac{1}{2}$  per cent.

I have looked at the valuation and earning power of railroads many times; if some bond house suggests investment, I look at the road, its condition and earning power and decide whether the security is such that we could accept the rate of interest provided in bond.

Primarily, I look at the security, you accept low rate on the bond because of the enormous security. The question is not so much of earnings as whether it makes bond absolutely safe; whether they will be met both in principal and interest; to be absolutely safe, it ought to earn just double the interest charged, to make low rate satisfactory; the nature of the business makes a great deal of difference in whether the rate is satisfactory.

There would be a difference between manufacturing stocks.

Q. Assuming corporation's life long enough to make a long time bond—30 years—would you make any difference as to earning capacity between a railroad and manufacturing company?

A. Of equal stability, no, it would make no difference. I had that in mind in giving rate of capitalization, I would make no distinction as to interest that should be earned on bank and railroad stocks; I would rather have smaller return on bank stock, it being more stable than railroad stock.

Banks in Michigan require double liability of stockholders for protection of depositors, stockholders in Michigan and Detroit have been called on to respond to that liability, I think the return 1024 to the investor on good bank stocks of Detroit is generally about 6 per cent.

On reflection the "Detroit National" bank stock pays on a basis of 4 per cent. above taxes; in fixing a ten year period I had in mind the depressed period of about 5 years from 1893 to 1898.

I would take ten years to cover the time, from 1893 to 1903, having in mind the lean period; I think railroad earnings have increased steadily in last 5 or 6 years, with the exception of 1903 (about which I do not know), would say that is true of net earnings.

Referring to the manufacturing business sold out on a 6 or 7 per cent. basis: In the 17 years taken into account, the earnings fluctuated greatly; the earnings, in percentage, were greater in 1888 than previously, this institution was Michigan Car Co. and associated industries, engaged in manufacture of cars; methods, development of machinery, etc. in the business, changed during the 17 years. The earnings during the 17 years did not furnish a good criterion of value in 1888 and had nothing to do with what we sold

at. At the beginning the earnings were very large and it ran through many years of depression with no net earnings.

Manufacturing plants are subject to considerable fluctuation and in buying stocks we take that into account; the idea is to get enough income in periods of prosperity to create a sort of sinking fund against years of unprofitable operation.

1025 H. D. WALBRIDGE, sworn for complain-t.

Direct examination by Mr. BUTTERFIELD:

I reside in New York city, am aged 47; and engaged in business of purchasing and reorganizing street railway, electric light and gas properties, for past ten years; reorganized 14 or 15 properties in New York, Michigan, Illinois, and Ohio, the largest being valued at seven to ten million dollars.

My personal part of the business has been to pass on the physical condition and present and prospective earning capacity of the property; I have had to do with four electric railways, the largest being Rochester Railway Co., with about 70 miles of track.

Q. In estimating the value of the property of a steam railroad company, by capitalization of average net earnings for a period of years; given the average net earnings, after the payment of taxes and charging to operating expenses sufficient to maintain the property against depreciation and keep it abreast of technical development, what rate would you use for capitalization?

Mr. KNAPPEN: That is objected to; it does not appear that witness is sufficiently expert or has had sufficient experience in valuation of steam railroad properties to render him competent to answer the question.

A. A basis of 8 per cent. would produce a rather excessive capitalization; we are assuming the property is an average property in good condition.

Subject to the same objection for period ending the second Monday of April, 1902 I would wish to consider, in ascertaining average of net earning, ten, and I think perhaps twenty years, this being based on my knowledge of the financial condition of country for the past 20 years.

Subject to the same objection on the rate there is no particular difference between April, 1902 and 1904.

The net return to investors in securities of the Michigan Central Railroad Company based on market value, I would say, has  
1026 not the least effect on the proper rate to use in capitalizing the net earnings.

Cross-examination by Mr. KNAPPEN:

Until recently I have been principally connected with the gas business. Am still manager of the Grand Rapids Gas Light Co.,

being until 1897 actively so engaged; before leaving Grand Rapids in 1897, I had gas properties at Kalamazoo and Jackson under my management. To this time had had no experience in reorganization of properties, except gas plants.

The following properties I have been identified with as executive of companies,—reorganized: Pontiac Light Co., Saginaw Gas Light Co., Bartlett Illuminating Co., of Saginaw, Saginaw Valley Traction Co., Springfield Consolidated Railway Co., Springfield & Central Illinois Railway Co., Springfield Gas Light Co., People's Hot Water & Electric Heating Co., of Springfield, Springfield Electric Light & Power Co., Bay City's Consolidated Street Railway Co., Bay City Gas & Electric Co., Bay City Traction & Light Co., Rochester Railway Co., Rochester Gas & Electric Co., and Grand Rapids Gas Light Co.

Only one or two were reorganized on the same plan; as a rule they are bonded; for Grand Rapids Gas Light Co., at time reorganized (1895) the bond issue of \$1,225,000 was practically the cost of reproducing physical property; and stock was \$1,000,000.

The Jackson Gas Co. had a bond issue of \$225,000 or \$250,000; I never figured its relation to the cost of reproduction; the bonds were rather less than the cost of reproduction; the stock was \$250,000. In Kalamazoo the bond issue was \$300,000, from impression I would say that it was more than the cost to reproduce, I never figured on that basis; the stock was about \$300,000.

The Saginaw Railway & Light Co. is a holdings Company, and holds the securities of several distinct companies; the Saginaw City Gas Co., Bartlett Illuminating Co., Saginaw Valley Traction Co., Bay City Traction & Light Co. and Bay City Gas Co.

1027 The various properties have bonds; I never figured the relation the issues sustain to the cost or reproducing the properties; the rule in cases has been to issue bonds for cost to buy properties of owners and to add further equipment and improvements, and issue stock in addition; four companies organized on that basis,—Grand Rapids, Kalamazoo, Jackson and Pontiac.

All the companies mentioned were not organized on a basis of capitalization (including stock and bonds) considerably larger than cost of reproducing the properties; the Saginaw and Springfield properties as a whole were not. In the four properties, it has been the policy in reorganization to capitalize for amounts larger than the cost of reproduction, and by operation of the properties, to bring the stock up; this is not true of Saginaw, Bay City and Springfield properties. Stock of these companies at the beginning would not sell for par, a market won't pay par for it.

The reorganizers, by additional money invested in the property and good management, essential to make a good earning property, made the stock valuable; the bonds have borne 5% interest and have sold at various prices, 80 and upwards—after a number of years of better management and additional investment, as high as 102 or 103.

They usually are 20 or 30 year bonds; investors do not buy them at the same rate of return as municipal bonds, because issued by a manufacturing business venture, with risks and no credit aside from physical property and ability of management.

I do not know what leading railway stocks of the class of and including the Michigan Central brought during the past 6 or 7 years; are not able in beginning to sell gas bonds at same low rate of interest to investors as steam railroad bonds of this class would sell.

One reason for this is that the railroads have established business and their bonds are known, while the reorganization is a new business, with new management and its bonds are unknown.

1028 I have no personal connection with a steam railroad, or its organization, and have no knowledge of technical development of steam railroad properties.

Redirect examination :

In capitalization of the average net earnings of an average good gas plant, well managed, would use a higher rate than for a railroad—a rate of about 15%.

Recross-examination :

Grand Rapids gas plant is the largest in Michigan of those mentioned, in its present condition of capitalization has capitalized at about 11 or 12%. With bonds \$1,225,000 and stock \$1,000,000, there are obligations to the equivalent of \$3,000,000.

(Witness refuses to tell net earnings of Grand Rapids Gas Light Co. for last 3 or 5 years).

I have made no computation running over the last ten years to determine the rate; when I say 12% I base it on what any manufacturing industry would expect, as least basis of return on its money. It is different from ordinary return for money loaned, one is a safe business with securities, the other an extremely risky business with great hazards; the necessity of the product may be wiped out tomorrow and leave property on hand without any possible use. You must create sinking fund by larger returns to take care of depreciation of the property when through with it, the idea being that there is likely to be a substantial part of the present value of the property wiped out by change in the method of production or something being substituted for it; and to provide a fund that will, over and above dividends, and interest paid, insure the conduct of the business and insure against unfor-seen contingencies that arise in any business; I am trying to explain the difference between banking business and these numerous manufacturing and public service enterprises which are here today and away tomorrow.

1029 J. H. SIMPSON sworn for defendant.

Direct examination by Mr. McPHERSON :

Have been in the railroad business for 28 years; for last ten years (except two when with Southern railway) I was connected with ex-



ecutive department of Pere Marquette or its predecessors; from 1891 to 1894 and 1897 to 1903 was assistant to the general manager; since, assistant to vice-president.

In my present position I have become familiar with the method of handling accounts, showing the earnings and operating expenses of the Pere Marquette; the net earnings of entire Pere Marquette system, exclusive of interest and taxes, were: 1900 \$1,967,883; 1901, \$2,099,063; 1902, \$2,444,841.

These figures are from the annual report furnished for the board of directors; the figures in this and similar reports for 1901 and 1902 are substantially the same as those in the report to the railroad commissioner; and substantially same as those on which Prof. Adams bases his values; in arriving at the operating expenses as shown by that report, no allowance was made for depreciation in equipment or buildings or for sidings or branch tracks taken up.

I have prepared figures showing what allowance should be made for depreciation of equipment, ballast, bridges, culverts and rails. The amounts actually expended in improving physical assets and the amounts that should have been expended to keep them in as good condition as at the commencement of the year are as follows:

Item.	Amount expended.	Should have been expended in addition.	Total additional.
1900.			
Locomotives.....	\$389,469 91	\$172,500 00	\$561,969 91
Freight cars.....	383,336 00	293,044 00	
Passenger cars.....	189,030 00	126,000 00	
Ballast.....	71,029 00	34,090 00	
Bridges and culverts.....	100,425 00	10,425 00	
Rail.....	69,334 00	325,517 00	
Total shortage account items named.			940,726 00
1901.			
Locomotives.....	434,297 00	208,000 00	
Freight cars.....	312,188 00	403,012 00	
Passenger cars.....	189,441 00	152,000 00	
Ballast.....	54,975 00	42,525 00	
Bridges and culverts.....	90,976 00	976 00	
Rail.....	73 755 00	176,245 00	
Total shortage account items named.			980,806 00
1902.			
Locomotives.....	440,430 00	238,000 00	
Freight cars.....	348,774 00	529,401 00	
Passenger cars.....	158,650 00	152,000 00	
Ballast.....	81,053 00	16,444 00	
Bridges and culverts.....	96,392 00	1,392 00	
Rail.....	57,092 00	192,908 00	
Total shortage account items named.			1,127,363 00



1030 In excess of amount necessary to properly maintain the property.

I am familiar with land grant of the Flint & Pere Marquette, the lands are being sold from year to year, the proceeds are credited to operating expenses, the net earnings being increased by the amounts realized from the sale; the amounts realized have been:

1900 \$11,394.09

1901 50,519.49

1902 21,764.00

There is no credit on account sidings or branch lines taken out; they are still allowed to stand as assets.

Referring to the annual report to the stockholders of the Pere Marquette for 1901, (p. 20) on which appears the construction account; items charged to that account do not appear in operating expenses; if items are charged to that account, which should appear in operating expenses, operating expenses should be so much more and net earnings so much less; the account starts with a debit balance of \$53,000,000; balance forward next year is \$54,800,000.

Q. Describe such items charged to that account as in your opinion represent merely the cost of keeping the road abreast of the times and are intended to maintain, rather than increase the net earnings.

A. Greenville and Putnam gravel pits, \$5,116 (should be included in operating expenses, as necessary part of maintaining track,—cheaper to buy pit than buy gravel.)

Real estate at Belding \$2,500 (new right-of-way to take place of one abandoned); real estate at Flint, Milford and on Chicago & North Michigan, \$49,755 (new right of way, the old reverting to owners when we changed track); locomotives \$25,591; cars, freight, \$142,535, passenger, \$58,067, (should be charged to operating expenses, as we charge nothing in our account for depreciation

1031 and it was proper and necessary to maintain the motive power and equipment to the standard of efficiency); changes of grade, \$292,274 (these changes made to enable road to maintain net earnings and meet competition).

\$314,375 for new rail to replace old rail, should have been charged to operating expenses.

In general improvement account, report of 1901 (p. 21) the following items should have been charged to operating expenses.

Plymouth coal station, \$3,692. (a transfer from one place to another, with no credit for tearing down); new machinery and tools, \$15,368 (replacing worn out machinery in shops — Saginaw and Ionia, no credit made on account of old machinery); new construction: Bridges, \$2,826, buildings \$30,831 (replacements of old bridges and buildings); \$114,000 for 4000 tons steel rail (used for renewal of main track rail).

Referring to the annual report to the directors for 1902 (p. 19) items charged to construction should have been charged to operating expenses as follows: New equipment, \$1,028,343 (this was expended to make good deficiencies in equipment the outgrowth of a

failure for a number of years to adequately provide for renewal; a portion represents renewals, a portion additional equipment); bonds of Michigan Equipment Co. \$143,000 (a payment of an installment on car trust bonds not provided for by sinking fund, issued several years before for the purpose of new equipment).

Paving Jefferson avenue, Bay City, \$6712 (a necessary part of obligation in connection with operation of track in street); passenger station, Bay City, \$12,809 (renewal); bridge over Grand river, \$42,724 (renewal); changes of grade, \$196,286 (necessary to enable road to meet competition, transport freight at a profit and maintain net earnings).

Port Huron ferry slip, \$15,012 (renewal); real estate for new yards, Grand Rapids, \$36,326 (portion of this at least, is proper charge to operation, as by the transfer of existing yards, earning capacity will not be increased, and land on which tracks now located can not be disposed of for cost). In all instances spoken of, where expenditures were made to renew or replace property, there has been no credit on account of former property and no yearly depreciation in equipment, buildings or other physical assets has been charged against operating expense.

Referring to the general improvement fund, same report (p. 20) the following should have been charged to operating expenses: Bridges \$40,187 (renewals); buildings, aggregating \$4,588 (renewals); interlockers, aggregating \$9719 (full, substituted for half, interlockers would not add to earning capacity,—required by State for protective purposes); Elmdale sinkhole, \$1356 (necessary track maintenance); re-survey, Saginaw district, \$6093 (necessary part of operation); new switch engines, \$34,129 (same as expenditure for new equipment).

The first statement of what should have been expended on certain items of physical property more than was expended is theoretical, based on annual depreciation, the second is made up from items actually appearing in the books the two will interlap more or less. During 1902, as in 1901, nothing was credited on account of sidings, spurs or commercial tracks taken up; they still appear on general balance sheet, in the construction account; when taken up, the natural thing would be to credit the construction account with the amount and charge it to operating expenses, indicating the track had been worn out in operation.

(Annual reports to directors for 1900, 1901 and 1902 offered in evidence, Ex. 1, 2 and 3, June 8, 1904.)

Had sufficient been charged to operating expenses to maintain the Pere Marquette property and equipment during 1901, 1902 and 1903 in as good condition as they were at the beginning of that period, the net earnings would have been: 1900, \$1,027,157; 1901, \$1,110,157; 1902, \$1,317,478.

These figures make no allowance for receipts from the sale of

trust lands used in operating expenses, if that correction (26)  
 1033 be made, the net earnings should be decreased by those  
 amounts. These figures do not cover depreciation or operat-  
 ing expenses, on other items than those specifically named.

It is not customary with the company to charge to operating ex-  
 penses many items which in my judgment should properly belong  
 and be charged there. Items, for equipment, charged to construc-  
 tion and general improvement accounts in 1900, 1901 and 1902 do  
 not, necessarily, belong to the operations of that year and should  
 not be confused with the figures for those years.

#### Cross-examination by Mr. KNAPPEN:

Data for reports (Exs. 1, 2 and 3, June 8, 1904) were prepared in  
 the auditor's office; I was as familiar with situation of the Pere  
 Marquette and the method of charging to operating expenses and  
 other accounts when these reports were made as I am now.

I knew then, as much as I know now, what the company's gross  
 or net earnings really were; these exhibits spoken of as reports to  
 the directors, are reports of the officers to the stockholders.

Their object was to furnish information to the stockholders of the  
 road's actual condition, earnings and operations and whether it  
 could afford to pay dividends; the report for 1900 (p. 15) states:

Interest charges.....	\$1,319,329.79
Surplus for year (difference between net earnings and interest charges) .....	646,189.56
Dividend on preferred stock (Feb. 11, 1901) .....	480,000.00
Balance (credited to general improvement fund for permanent improvements and betterments) .....	166,189.56

In the profit and loss account, Dec. 31, the operating expenses  
 interest charges, taxes and dividend are stated; the improvements  
 for 1900 are given at \$25,397.37; and the balance credited to gen-  
 eral improvement fund is \$140,792.19.

A. Four per cent. dividend was paid on the preferred stock, based  
 on this report. If my statement of net depreciation alone is taken  
 into account, there was not money enough to pay a dollar of  
 1034 dividend, but would have been a material deficit, and no  
 general improvement fund; I cannot tell why in profit and  
 loss account, the improvements were put in at \$25,397.37.

By stating to the stockholders that the improvements made after  
 paying operating expenses were \$25,397.37 it was meant to say that  
 after those improvements, operating expenses and dividends were  
 paid, there was still a balance in the general improvement fund of  
 \$140,792.19; that statement was true on the basis of the accounts as  
 kept, but not in fact, had we kept the property to standard we would  
 not have had that fund; all these reports were made for the same  
 purpose.

(Witness after examination of reports for 1901, 1902 and 1903 says he was mistaken in saying the receipts from sales of trust land grant lands were included in earnings for 1901, '2 and '3, and that those earnings should not be decreased by those amounts.)

In my direct testimony, I mean that to cover actual depreciation in locomotives, freight and passenger cars, ballast, bridges, culverts and rails, there should have been expended in 1900 \$940,726; 1901, \$980,806; 1902, \$1,127,363 more than was expended, to keep property up to requirements of the traffic, this should have been made as an arbitrary charge for depreciation or, an expenditure for maintenance.

The amount specified, should have been expended for new equipment, in order to keep it in number and character up to the requirements of the business; irrespective of taking care of the business, so far as the equipment is concerned, it is from time to time necessary to renew it and we would still require that many additional cars; so far as equipment is concerned we can eliminate the question of maintaining to meet competition.

In 1900 there was expended \$389,469.91 for locomotives and the additional need was \$172,500. In not using the amount specified, we have not maintained our equipment during the year; the maintenance figures were given by the auditor.

1035 I furnished the depreciation figures on equipment; took fifteen years for the life of locomotives, freight and passenger cars considered a depreciation about 7 per cent. per year; the figures of additional need to prevent depreciation of the balance were furnished by the chief engineer. I am not responsible for them.

I am responsible for the figures on locomotives and passenger and freight cars; as to ballast, bridges, culverts and rails, I rely on the authority of the engineer, and don't know the amount to take the place of actual depreciation, or to meet the requirements of business.

Q. The clause, report for 1900 (p. 8.) "An unusual large amount of work has been done upon the motive power and equipment belonging to your company, which has materially increased the operating expenses of the mechanical department, but has placed the equipment in excellent shape for the requirements made upon it," refers, does it not, to locomotives, freight and passenger cars?

A. Yes, sir.

Though not necessarily to those paid for out of operating expenses; while it says, "materially increased the operating expenses," it doesn't say that it was charged there. In comparison with previous years, we hadn't kept the equipment up; that is a general statement of the president, who wants to make things look "nice and read right;" he might, if put on oath, be a little more careful of what he says; the equipment referred to in this report (p. 7), costing \$705,000 was not paid for out of operating expenses. A portion of it was paid for by bonds and portion by car trusts. It is im-

possible to say what was covered by car trusts or bonds except by checking through mechanical department.

According to my testimony, the theoretical depreciation for 1900 was \$940,726 and the report to stockholders showed a nominal surplus of \$166,189.56 and a dividend of \$480,000.

Q. If your testimony is true, you lacked, after wiping out the surplus and dividends, \$294,536.44 of being able to pay the interest?

A. Yes, sir.

1036 In 1900 the percentage of expenses to earnings, exclusive of taxes, was 73.15, including taxes 73.31, which I should say was a very low percentage.

Q. What do you understand is the average?

A. There is no average.

Q. How do you know it is low?

A. No man can fix upon a particular percentage of operating expenses and say it is the ratio that should apply absolutely to any railroad. We cannot at any time maintain our property properly at any such per cent.

I stated that the depreciation on equipment, bridges, culverts and ballast, in 1901, would amount to \$980,806, that year we paid a dividend of \$420,446, and reported a surplus, after payment of dividend and operating expenses, of \$212,147.93; if my testimony as to the amount necessary to take care of depreciation, in the items named, is correct, we wouldn't have paid a dividend, but would have wiped out the surplus and lacked \$348,212.07 of being able to pay interest, out of net earnings.

Q. In report for 1901 (p. 7) is statement,—“The following expenditures have been made for betterments and are included in the amounts charged to operating expenses instead of the cost of property,” items aggregating \$185,666.29, so that that year was there charged to operating expenses that much on account of betterments?

A. Probably, but not necessarily. In these reports the words “operating expenses” are used carelessly.

The road makes reports to the railroad commissioner, Interstate Commerce Commission and State tax commission.

The operating expenses in the report to the Interstate Commerce Commission are required to be according to a certain classification; the report to State tax commission in practically the same form; in these reports probably (will not say they were not), all items from page 7, just read (aggregating \$185,000) have been included in the operating expenses to arrive at the net earnings.

1037 The rebuilding of 180 miles of lines (included in aggregate) is in no sense a betterment, but properly belongs to operating expenses; in the report to the Interstate Commerce Commerce, it is specially stated what is an improvement; if accountant deliberately falsified his judgment, it is not a correct report; the tax commission and interstate commerce reports are practically identical.

The renewal of rail is not betterment, even if heavier and better rail put in, and takes place of inferior rail; if 50 pound rail replaced with 90 pound, it would not be to the extent of the difference a betterment; the theory being that increased rail is necessary to meet the greater traffic and competition of the road. It is properly chargeable to operating expenses, as it makes no difference in net earnings.

The same is true of renewals of station buildings, bridges and culverts; if a wooden, is superseded by a modern stone bridge, all should be charged to operating expenses.

In 1902, according to the rules here given, it would take \$1,127,363 additional to take care of depreciation; the amount actually charged for equipment, ballast, bridges, culverts and rail was \$1,182,391. To reach net earnings of \$2,444,841.35 the following amounts were reported as paid out of operating expenses: Maintenance of equipment, \$1,040,473.87; maintenance of way and structures, \$1,480,422.42.

1038 In 1901, to reach net earnings of \$2,090,963.18, there was included in operating expenses, for maintenance of way and structures \$1,586,996.52, for maintenance of equipment, \$1,038,197.85.

In 1902, the Pere Marquette reported a surplus of \$993,136.79; and paid a dividend of \$420,416 out of surplus.

On the theory of my testimony of depreciation, and the amounts necessary to take care of it, on the items named, the depreciation would have wiped out the surplus and dividend and lacked \$146,226.21 of meeting interest.

The betterments charged to operating expenses may have increased the cost of reproduction but not the actual value of the road: part didn't increase efficiency in the least.

Q. The report to stockholders for 1902 (p. 13) says: "The new work which has been done and is in progress is in conformity with the policy established by your management and our improved physical condition of the property, particularly those divisions over which the heaviest traffic is handled, that the cost of operation may be reduced."

Is it worth more money if it is in shape to reduce the cost of operation?

A. From the standpoint of earnings, no. If the gross earnings remain the same, the net earnings are increased by the decrease in the cost of operation,—net earnings do not remain same; you can not maintain your gross earnings at all without this.

Q. The report also says: "In carrying out this policy large expenditures have been made in replacing wooden bridges with permanent structures of steel and cement. Real estate has been purchased at various points to relieve congestion and consequent expense at junctions and termini; new sidings and passing tracks have been built to facilitate the movement of trains, and new steel



has been laid and locomotives, freight cars and passenger cars added to your equipment, so that the physical condition of the property shows a marked improvement over the preceding year." Was that true?

A. That was, in part, true. It was written to create a favorable impression; it is a question of measurement, it might have been improved \$10,000 or \$500,000—there was some improvement.

The property was not worth more, because, as stated in the report (1901) of the purchase of 31 new engines; the company did not pay for them, it was not in the operating expense, the obligation was there to pay for them in our note or bond.

In 1900, there was added to the equipment 500 box, 200 coal and 10 caboose cars, costing \$520,000; 5 passenger, 10 freight and 1 switch engines, costing \$185,000;

In 1901, there was added 1,189 freight cars (net 1,011); 32 engines (net 30); 3 parlor and 2 passenger cars (1 passenger and 2 office cars destroyed and 1 baggage changed to caboose) (net 1 car).

In 1902, there was a net addition to locomotives of 16 and passenger cars, 13; addition to freight equipment, 731 cars and 27 caboose cars; I am not prepared to say this was a net addition; they were not charged to operating expense. As a rule scrapped cars are credited to renewal of cars and locomotives.

New rails were charged to operating expense; rails taken out were relaid at other points, so were not a loss; the labor of taking up, relaying, and expense of relaying was lost; as a rule where new rails are laid in main track, the rail taken from the main track is laid in the sidings or unimportant lines.

In 1900, the road did not progress so far, in betterments, as to reduce the cost of operation; in 1901, the cost of operation was reduced a small amount, and in 1902, a further reduction was made in the cost of train service, through the reduction of grades. In none of the years was it a large amount, because the work had not been completed and we did not get the benefit of the grade reductions made. In 1902, the percentage of expenses to earnings, exclusive of taxes, was 2.68 per cent., less than in 1901, and including taxes 1.83 per cent. less; don't think this due to increased equipment—that would increase expense.

The report for 1902 to stockholders (p. 5) stated:

"The new work begun in 1901, now almost completed, was intended to so improve the physical condition of your property that the cost of operation might be considerably reduced. This expectation is now being realized, and will be further reflected in the cost of operation of 1903."

This was true, but was dated April, 1903, and confirms that we got practically no benefit during 1901 and 1902, for moneys expended in grade reduction, as we had not proceeded far enough to operate under the reduction. While taxes for the year were larger and cost of fuel (November and December) materially increased, the operating expenses increased only \$292,828.79 and the gross reve-



nue increased \$754,199.87; the only way a road like ours can increase the net, is by increasing the gross earnings; operating expenses ought not to go up in proportion to the gross earnings; the higher the gross earnings, the smaller should be the percentage of operating expenses.

Q. The report to stockholders, 1902, stated :

"The rapid development and industrial progress in the territory served by your company is almost phenomenal. These appear to be of a character giving indication of permanency and substantiability." Was that true?

A. The statement is a glittering generality, in part true; we have had two or three years of phenomenal business development and it was reflected in the business condition of the Pere Marquette, we are now beginning to feel a reverse effect; the improvements are there, ready for prospective benefit when the traffic comes,—the results are for the future to determine.

1041 Taxes accruing in 1900 were paid the July following. The report for 1902 included taxes which were not paid when the report was gotten up in March, 1903, but were paid April 1st; they were charged off and the money was ready to pay them when the report was issued.

The amount reported for 1902, \$389,665.33, was paid on the specific basis, and includes specific taxes and local taxes, in Michigan, Indiana and Ohio. Item, \$389,665.33, does not take into account the tax as assessed by the State board, but only so much as paid, based on the old law; in that item we do not include an estimated amount under the ad valorem law.

(Witness agrees to furnish a statement showing the equipment purchased from 1900 to 1903, with details showing the prices and accounts to which charged.)

This statement is as follows:

**Statement of Equipment Purchased by Pere Marquette R. R. Co. During Years  
1900, 1901, and 1902, Showing Total Cost and How Paid for.**

	Cost.	How charged.			
		Cost of road.	Improvement.	Operating expenses.	Car trusts.
<b>1900.</b>					
Locomotives.....	\$25,791 97			\$25,791 97	
Passenger cars.....					
Freight cars.....					
<b>Total.....</b>	<b>\$25,791 97</b>			<b>\$25,791 97</b>	
<b>1901.</b>					
Locomotives.....	\$221,659 29	\$221,659 29			\$221,659 29
Passenger cars.....	26,007 14	26,007 14			
Freight cars.....	954,993 10	142,000 00		\$812,993 10	766,771 20
<b>Total.....</b>	<b>\$1,244,659 53</b>	<b>\$389,666 43</b>		<b>\$812,993 10</b>	<b>\$988,430 49</b>
<b>1902.</b>					
Locomotives.....	\$440,371 41	\$221,325 00	\$219,046 41		\$16,000 00
Passenger cars.....	129,999 07	129,999 07			
Freight cars.....	323,724 22	323,724 22		\$211,540 00	
<b>Total.....</b>	<b>\$1,894,055 70</b>	<b>\$1,675,329 29</b>	<b>\$538,120 41</b>	<b>\$211,540 00</b>	<b>\$16,000 00</b>

\* Of the amount expended for freight cars in 1901, \$26,226.32 was for special equipment which was charged to operating expenses as follows:

1901.....	\$11,340 00
1902.....	15,886 00
1903.....	9,000 00
<b>Total.....</b>	<b>\$36,226 00</b>

**1042      Paid to Car Trusts and Not Charged to Operating Expenses.**

	1900.	1901.	1902.
Western Equipment Co.....	\$12,000 00	\$12,000 00	\$12,000 00
Michigan Equipment Co.....	24,000 00	24,000 00	10,000 00
Marquette Equipment Co.....	15,233 32	165,000 00	114,000 00
<b>Total.....</b>	<b>\$51,233 32</b>	<b>\$141,000 00</b>	<b>\$136,000 00</b>

**Equipment Worn Out and Destroyed.**

	1900.	1901.	1902.
Engines.....	16	6	3
Passenger coaches.....		4	1
Freight cars.....	216	166	282

The Pere Marquette was running lines of boats in 1901 and 1902. In the reports to the State authorities of the earnings of boats we simply put in the Michigan proportion of all earnings; my memory is not clear, but recollection is that we prorated the car ferry business on a mileage basis, and in break bulk business, credited the boats with a certain percentage of earnings, but not on a mileage basis; the boats were registered at Saginaw, and assessed and taxed locally.

I am not sure about this, for 1902, as there was some question about the tax for this year, because the State included boat earnings in its assessment originally; the boats were a part of the system from 1900 to 1902, and, except car ferry No. 15, were owned by company; part of the earnings of these boats were reported as earnings in Michigan to the railroad commission, I don't know how much.

"(Mr. KNAPPEN: I might say on the record, it appearing by the testimony of this witness that he is not himself responsible for the figures as to the depreciation or cost of maintaining ballast, bridges and culverts and rail, that I object to his testimony as incompetent so far as it relates to those subjects, and also as to buildings. \* \* \*

Mr. KNAPPEN: I would like that there be added to this 1043 schedule we called for, the number of tons of heavier rail substituted for the old rail and showing each time, each year, the weight of the rail for which the substitution was made and the weight of the rail substituted.")

#### Redirect examination:

On examination, I find that the receipts from the land grants have been actually used in paying operating expenses; the force of Mr. Knappen's objection is that they happened to be carried to general improvement fund account and not brought into general account.

The reports to the stockholders, as published, are correct in every particular; there has been no attempt to hide, conceal or misrepresent anything. I have simply said that the reports show what we did charge to operating expense, but do not show what in addition ought to have been expended and charged there, to maintain the property; the statements in reports must be understood in connection with the accounts accompanying them, which show the actual facts. Though 90 pound rail has greater market value than 60 pound rail, the company cannot maintain itself without putting in the heavier rail.

It could not keep up gross earnings and would make a poorer showing in net earnings, without putting in improvements to keep abreast of the times; while heavier rail may increase market value of the rail, it does not necessarily increase the road's net earnings.

A large amount of new equipment was actually purchased (on practically the installment plan) which does not appear in operat-

ing expenses; on the advent of good times in 1900, the company took advantage of condition and attempted to make good the depreciation which should have been taken care of in the seven

1044 years preceding; even with the additions to equipment we have not fully succeeded in making good the depreciation.

We were unable to pay for such equipment as was purchased from operating expenses, and did so by the proceeds of bonds and by our trusts; the cost of such equipment does not appear in operating expenses and the title to the greater part of the equipment so added does not rest in Pere Marquette.

#### Recross-examination :

We added new equipment in 1900, 1901 and 1902. In each of those years there has been an increase in net earnings, over the preceding year; (the additional equipment did not increase net earnings, we had to maintain the old equipment) I don't believe in 1900 the additional equipment had any effect on the net earnings; in 1901 and 1902 additional equipment added somewhat to the gross earnings. The tendency of increase in gross, is to increase net earnings.

Increase in the operating expenses does not keep pace, with the increase in gross earnings; the tendency of railroad operations is to increase value of the physical property and the efficiency of the equipment for purpose of increasing earnings. Upon the proposition that the receipts from the sale of trust lands went to pay for betterments charged to operating expenses, report for 1901 (p. 21) shows balance at end of that year of \$32,000 more on hand, than at the beginning of the year, in general improvement fund.

Q. Wouldn't it be true then that only the difference between \$32,000 and \$61,930.58 (\$29,930.58) could have been included in improvements or gone to the credit of operating expenses?

A. Don't see exactly the force of it.

The year 1902 was started with a balance of \$172,000, the balance at the end of the year was \$254,870, or nearly \$82,000 more than the balance at the beginning, while the addition on account 1045 of the land department receipts was only \$21,764.

*Ex 1. June 8. 1904*

FIRST ANNUAL REPORT

OF THE

PERE MARQUETTE RAILROAD  
COMPANY,

FOR THE FISCAL YEAR ENDING

DECEMBER 31, 1900.

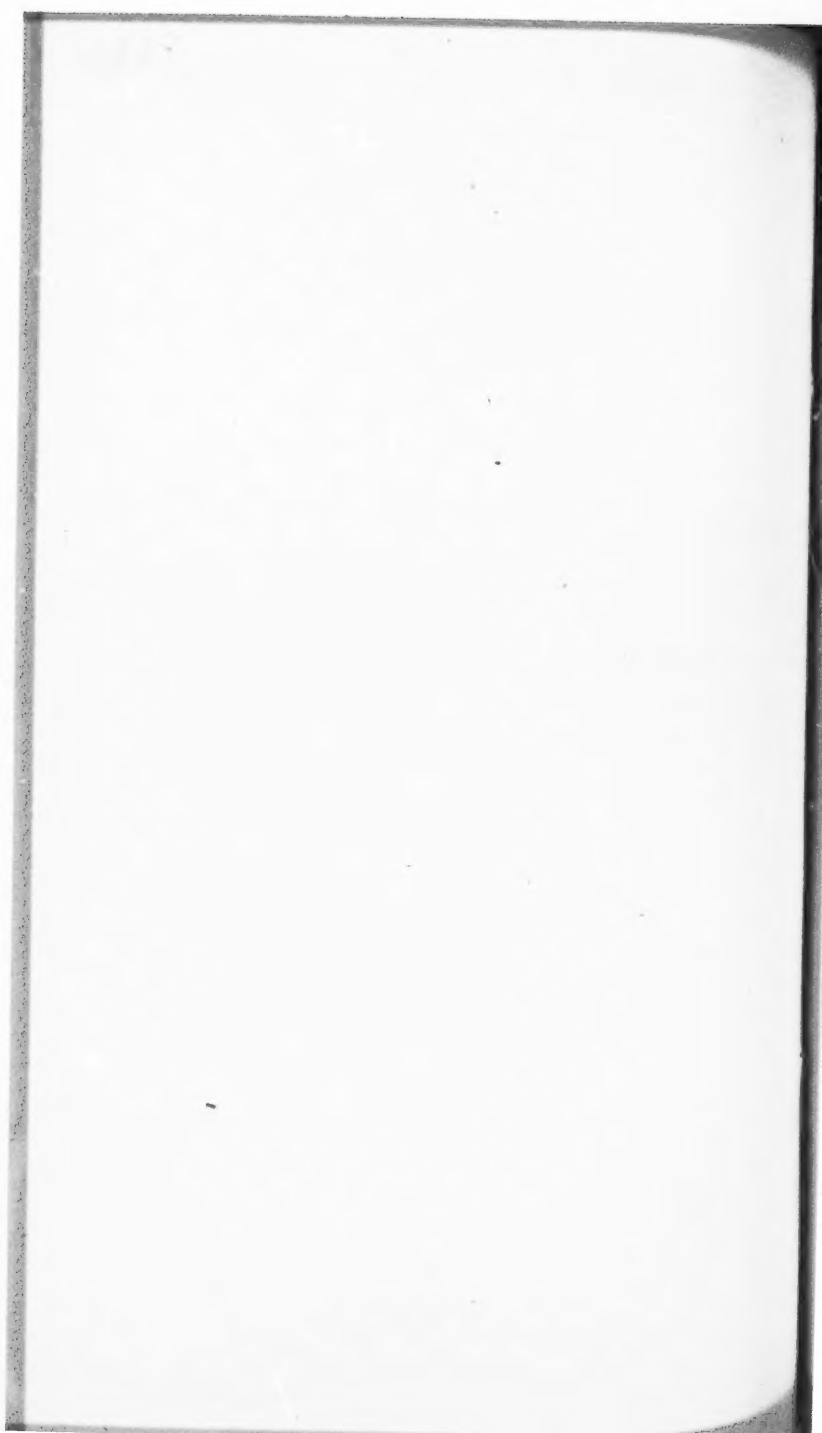
---

BOSTON:

T. W. RIPLEY, PRINTER.

1901.

1046



# PERE MARQUETTE RAILROAD COMPANY.

## DIRECTORS.

WM. W. CRAPO . . . . .	NEW BEDFORD, MASS.
NATHANIEL THAYER . . . . .	BOSTON. "
OLIVER W. MINK . . . . .	" "
JOHN M. GRAHAM . . . . .	" "
WALTER HUNNEWELL . . . . .	" "
F. H. PRINCE . . . . .	" "
CHARLES MERRIAM . . . . .	" "
MARK T. COX . . . . .	NEW YORK, N. Y.
THOS. F. RYAN . . . . .	" "
CHARLES M. HEALD . . . . .	DETROIT, MICH.
STANFORD T. CRAPO . . . . .	" "

## EXECUTIVE COMMITTEE.

WM. W. CRAPO, CHAIRMAN.

NATHANIEL THAYER.	OLIVER W. MINK.
THOS. F. RYAN.	F. H. PRINCE.
	MARK T. COX.

## OFFICERS.

WM. W. CRAPO . . . . .	CHAIRMAN OF THE BOARD.
CHARLES M. HEALD . . . . .	PRESIDENT.
JOHN M. GRAHAM . . . . .	VICE-PRESIDENT.
MARK T. COX . . . . .	VICE-PRESIDENT.
CHARLES MERRIAM . . . . .	SECRETARY AND TREASURER.
STANFORD T. CRAPO . . . . .	GENERAL MANAGER.
H. C. POTTER, JR. . . . .	ASS'T SEC'Y AND COMPTROLLER.
A. PATRIARCHE . . . . .	TRAFFIC MANAGER.

## GENERAL OFFICES.

FORT STREET UNION DEPOT, DETROIT, MICH.

## STOCK TRANSFER OFFICES.

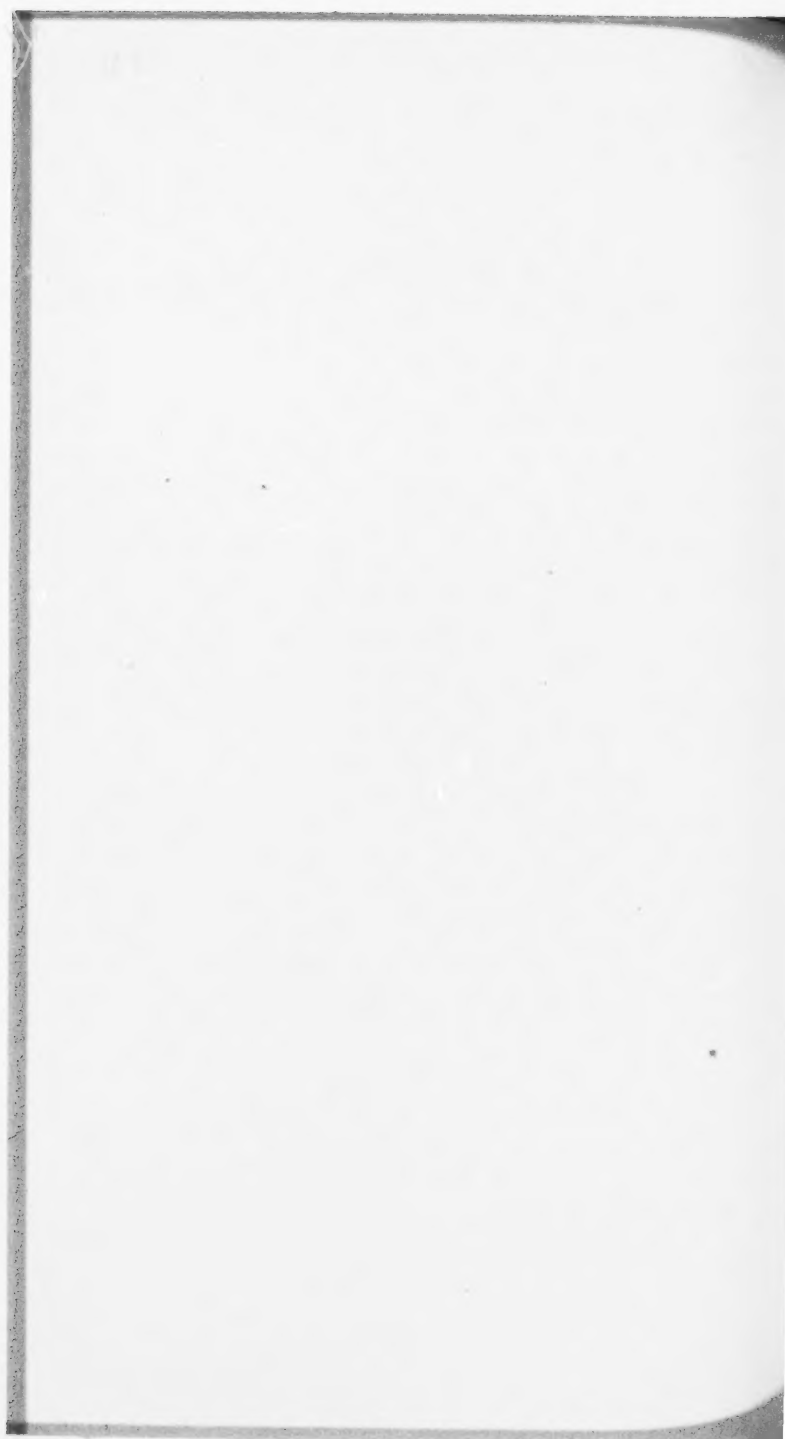
50 STATE STREET, BOSTON.

40 WALL STREET, NEW YORK.

## ANNUAL MEETING.

First Wednesday in May, at Detroit, Mich.





# FIRST ANNUAL REPORT.

DETROIT, MICH., May 18, 1901.

*To the Stockholders of the*

*Pere Marquette Railroad Company:—*

Your Directors submit the following statement of the operations of the Company for the year ending December 31, 1900:

## GROSS EARNINGS, INCLUDING EARNINGS OF LEASED LINES AND STEAMERS.

From Freight . . . . .	\$5,540,188 87	
" Passengers . . . . .	2,414,103 30	
" Mail, Express and Miscellaneous, . . . . .	341,819 50	\$8,296,111 67

The expenses were:

Operating Expenses . . . . .	\$6,068,701 03.	
Taxes . . . . .	261,891 29	\$6,330,592 32
Net Earnings from Operations . . . . .		\$1,965,519 35
Interest Charges . . . . .		1,319,329 79
Surplus for the year . . . . .		\$646,189 56
Dividend of 4% on Preferred Stock, Feb. 11, 1901 . . . . .		480,000 00
Balance, by vote of Directors, credited to a general improvement fund to be used for permanent improvements and betterments . . . . .		\$166,189 56

The following Statement shows the Comparison of Earnings and Expenses of Pere Marquette Railroad for 1900 with the combined Reports of the

FLINT & PERE MARQUETTE RAILROAD,  
CHICAGO & WEST MICHIGAN RAILWAY,  
DETROIT, GRAND RAPIDS & WESTERN RAILROAD,  
SAGINAW, TUSCOLA & HURON RAILROAD (11 months).

	1900. P. M. R. R.	1899. Combined Reports.	INCREASE IN 1900.
Gross Earnings . . .	\$8,296,111 67	\$7,368,794 49	\$927,317 18
Operating Expenses . . .	6,068,701 03	5,437,446 95	631,254 08
	\$2,227,410 64	\$1,931,347 54	\$296,063 10
Taxes . . . . .	261,891 29	230,374 01	31,517 28
Net Earnings . . . . .	\$1,965,519 35	\$1,700,973 53	\$264,545 82
Interest Charges. . . . .	1,319,329 79	1,289,420 38	29,909 41
Surplus . . . . .	\$646,189 56	\$411,553 15	\$234,636 41

	1900.	1899.	DECREASE.
Percentage of Expenses to Earnings (exclusive of Taxes) . . . .	73.15	73.79	.64
Percentage of Expenses to Earnings (including Taxes) . . . . .	76.31	76.92	.61

Realizing the importance of reducing the grades for the purpose of more economically handling the traffic on the lines over which the bulk of the freight traffic is to be handled, your management decided to establish the maximum grade at 26.4 feet to the mile. Arrangement for this was not made until the latter part of the year, so that the expenditure in this direction has been small comparatively thus far, amounting in the aggregate to about \$25,000. It is proposed, however, during the current year to continue this work to the end that the

maximum grade upon the main line between Toledo and Ludington will be brought to 26.4 feet per mile. This will involve work at five different points on the line, the aggregate expense of which will be \$280,000.

Your management has, also contracted for the construction of a new line from Greenville to Stanton, distance twelve miles, thereby reducing the distance between Grand Rapids and Saginaw twenty-one miles.

In addition to the above, the following improvements have been authorized and it is expected that they will be completed during the year 1901.

A double track steel bridge over Grand River at Grand Rapids; rebuilding of the Third Street freight depot at Detroit; construction of additional side and yard tracks at Delray, Plymouth, Grand Rapids and Ludington, with the acquirement of additional water frontage for the new car ferry slip at Ludington, — the estimated cost of these improvements being \$150,000.

In addition to the track improvements above noted, a contract was placed this year for 25,000 tons of 75-pound steel rail, with which to relay the main line of the road, in order to properly care for the increased weight of new power and equipment necessary to handle the increased traffic. The large majority of this rail will be laid in the year 1901.

The equipment of your Company has been materially increased by the addition, during the present year, of 500 box cars, 200 coal cars and 10 caboose cars, costing \$520,000; 5 passenger engines, 10 freight engines and 1 switching engine, costing \$185,000. In addition thereto, there have been ordered 500 box cars and 100 coal cars, costing \$445,000; 8 consolidated freight engines, 1 passenger engine and 1 switching engine, costing \$135,000; and 5 parlor and café cars, costing \$56,000.

A contract was also placed this year for a new car ferry boat, costing \$340,000, which will be delivered on or about July 1, 1901, the steadily increasing traffic across Lake Michigan making this addition to the marine equipment imperative. In order to better care for the increase in passenger traffic across Lake Michigan, Steamer No. 5 will be remodeled, at an expense of \$40,000, and placed, in connection with steamer No. 4, on the passenger route between Milwaukee and Holland, which was so successfully opened and operated the past season.

*PERE MARQUETTE RAILROAD COMPANY.*

An unusually large amount of work has been done upon the motive power and equipment belonging to your Company which has materially increased the operating expenses of the mechanical department, but has placed the equipment in excellent shape for the requirements made upon it.

*MARQUETTE EQUIPMENT COMPANY, LIMITED.*

To provide funds for the purchase of the greater part of the additional equipment, an Equipment Company bearing the above name has been formed under the laws of Michigan, and 5% bonds of same, dated October 1, 1900, and due October 1, 1910, guaranteed by the Pere Marquette Railroad Company, authorized to the extent of \$1,000,000. A sinking fund is provided by the Pere Marquette Railroad Company by a monthly charge to operating expenses by which one-tenth of the total amount of bonds is retired each year at par and accrued interest, and the privilege reserved by the Railroad Company to increase that amount or pay the entire issue at par and accrued interest at any time on sixty days' notice. \$136,000 of these bonds were sold during the past year and the proceeds used for the purchase of 200 coal cars. The proceeds of the balance of the bonds will be used on account of the cost of the additional equipment above mentioned, as it is delivered during the present year.

For further information in regard to the affairs of the Company reference is made to the following financial statements and reports of the Comptroller, and for statement of the Land Department to that of William W. Crapo, Trustee, on page 27.

Yours respectfully,

CHARLES M. HEALD,

*President.*

## COMPTROLLER'S REPORT.

---

To Mr. CHARLES M. HEALD, *President.*

*Dear Sir,*—I herewith submit the following accounts and statements of the Pere Marquette Railroad Company for the year ending December 31, 1900:—

1. Condensed Balance Sheet.
2. Profit and Loss.
3. Funded Debt.
4. Description of Outstanding Bonds.
5. Classification of Tonnage.
6. Comparative Statement of Earnings and Expenses.
7. Comparative Detailed Statement of Operating Expenses.
8. Earnings and Expenses by months.
9. Freight Statistics.
10. Passenger Statistics.
11. Mileage.
12. Equipment.

Yours respectfully,

H. C. POTTER, JR.,

*Comptroller.*

## PERE MARQUETTE RAILROAD COMPANY.

# **I.** **CONDENSED BALANCE SHEET, DECEMBER 31, 1900.**

PROPERTY ACCOUNTS.		CAPITAL ACCOUNTS.	
Cost of Road Construction and Equipment	\$53,102,703 15	Capital Stock: Common	\$16,000,000 00
Equipment: Equipment Companies	416,000 00	Preferred	12,000,000 00
Stocks of other Companies	777,085 18	Funded Debt	\$28,000,000 00
			26,793,070 63
AVAILABLE ASSETS.		CURRENT LIABILITIES.	
Cash and Bills Receivable	910,512 29	Accrued Bond Interest	299,828 85
Material on hand	406,299 91	Unpaid Coupons	39,107 98
Open Accounts	968,978 29	" Vouchers	912,403 98
Trustees' Equipment Companies	13,000 00	" Taxes	232,067 38
Bonds in Treasury	175,000 00	Dividend of February 11, 1901	480,000 00
	\$56,769,578 82	Sinking Funds Equipment Bonds	13,000 00
			\$56,769,578 82

## **2.** **PROFIT AND LOSS, DECEMBER 31, 1900.**

Operating Expenses	\$6,068,701 03	Gross Earnings	\$8,296,111 67
Interest Charges	1,319,329 79		
Taxes	261,891 29		
Dividend No. 1 on Preferred Stock, 4%, payable February 11, 1901	480,000 00		
Improvements, 1900	25,397 37		
Balance to General Improvement Fund	140,792 19		
	\$8,296,111 67		\$8,296,111 67



# 32. FUNDED DEBT.

DESCRIPTION OF BONDS.	Date of Issue.	When Payable.	Interest.		Amount Outstanding.
			When Payable.	Payable.	
Flint & Pere Marquette Railroad Company - - - - - See Note 1.	Oct. 1, 1886	Oct. 1, 1920	6%	April and Oct.	\$4,000,000 00
Holly, Wayne & Monroe Railway Company - - - - - See Note 2.	Jan. 1, 1871	Jan. 1, 1901	8%	Jan. and July	1,000,000 00
Flint & Pere Marquette Railroad Company (Consolidated) - See Note 3.	May 1, 1889	May 1, 1919	5%	May and Nov.	2,850,000 00
Flint & Pere Marquette Railroad Co. (Port Huron Division), See Note 4.	Apr. 1, 1889	Apr. 1, 1919	5%	Apr. and Oct.	3,500,000 00
Flint & Pere Marquette Railroad Company (Toledo Division), See Note 5.	July 1, 1897	July 1, 1917	5%	Jan. and July	400,000 00
Pere Marquette Transportation Company (Car Ferry) - - See Note 6.	Oct. 1, 1897	\$20,000 annually Jan. 1.	6%	Jan. and July	140,000 00
Chicago & West Michigan Railway Company - - - - - See Note 7.	Dec. 1, 1881	Dec. 1, 1921	5%	June and Dec.	5,738,000 00
Chicago & North Michigan Railroad Company - - - - - See Note 8.	May 1, 1891	May 1, 1931	5%	May and Nov.	1,667,000 00
Grand Rapids, Newaygo & Lake Shore Railroad Company - See Note 9.	June 1, 1875	June 1, 1905	7%	June and Dec.	19,000 00
Detroit, Grand Rapids & Western Railroad Company - See Note 10.	Apr. 1, 1897	Apr. 1, 1946	4%	April and Oct.	5,379,168 13
The Michigan Equipment Company, Limited - - - - - See Note 11.	June 1, 1892	June 1, 1902	6%	June and Dec.	181,000 00
The Western Equipment Company, Limited - - - - - See Note 12.	Apr. 1, 1889	Apr. 1, 1909	6%	April and Oct.	116,000 00
Marquette Equipment Company, Limited - - - - - See Note 13.	Oct. 1, 1900	Oct. 1, 1910	5%	April and Oct.	119,000 00
Saginaw, Tuscola & Huron Railroad Company - - - - - See Note 14.	Feb. 1, 1900	Feb. 1, 1931	4%	Feb. and Aug.	1,000,000 00
Chicago & West Michigan Railway Company, Coupon Scrip.				Total,	67,100,200 00
					\$67,993,070 63

4.

DESCRIPTION OF OUTSTANDING BONDS.

NOTE 1.

Flint & Pere Marquette Railroad Company 6% Bonds of 1920. Outstanding \$4,000,000. Limit of issue \$5,000,000, including Holly, Wayne & Monroe Railway 8% Bonds \$1,000,000.

First mortgage upon the following mileage:

Holly to Ludington . . . . .	188.00
Horton to Otter Lake . . . . .	14.40
Saginaw to Bay City . . . . .	12.5
	<hr/>
	214.90 miles.
Second lien Monroe to Holly	65. "

By the retirement of \$1,000,000 Holly, Wayne & Monroe Railway Company 8% Bonds January 1, 1901, and the issue of \$1,000,000 of Flint & Pere Marquette Railroad 6% Bonds of 1920, reduced to 4%, this mortgage becomes a first lien upon 65 miles of main line Monroe to Holly.

NOTE 2.

Holly, Wayne & Monroe Railway Company 8% Bonds, due January 1, 1901.

First mortgage on 65 miles of main line Monroe to Holly. (These Bonds were paid January 1, 1901.)

NOTE 3.

Flint & Pere Marquette Railroad Company Consolidated 5% Bonds of 1939. Outstanding and total that can now be issued, \$2,850,000. Original authorized issue \$10,000,000, including prior issues of Flint & Pere Marquette Railroad, as per notes one and two.

First Mortgage on the following mileage:

Delray to Oak . . . . .	8.43
Saginaw Belt Line . . . . .	10.14
Coleman to Mt. Pleasant . . . . .	14.78
Coleman to Beaverton . . . . .	10.06
Clare to Leota . . . . .	27.
Merritt to Manistee . . . . .	27.06
Sundry Short Branches . . . . .	21.25
	<hr/>
	119.72 miles.

Second lien on mileage schedule in Note 1.

PERE MARQUETTE RAILROAD COMPANY.

723  
13

NOTE 4.

Flint & Pere Marquette Railroad Company, Port Huron Division,  
5% of 1939.

Amount outstanding and total authorized \$3,500,000.

First Mortgage on the following mileage:

Saginaw to Port Huron . . . .	90.30
Port Huron to Almont . . . .	34.09
Port Huron to Grindstone City . .	92.33
Palms to Harbor Beach . . . .	18.30

235.02 miles.

NOTE 5.

Flint & Pere Marquette Railroad Company, Toledo Division, 5%  
Bonds of 1937. Amount outstanding and total authorized \$400,000.

First Mortgage on line from Alexis to Rasin 18.70 miles. Also  
covers lease with Ann Arbor Railroad for trackage and terminals at  
Toledo, Ohio.

NOTE 6.

Pere Marquette Transportation Company 6% Bonds. Outstand-  
ing December 31, 1900, \$140,000. Original issue \$200,000. Reduced  
by payment of \$60,000 of bonds maturing on Steel Car Ferry Steamer  
"Pere Marquette."

Principal and Interest guaranteed by Flint & Pere Marquette  
Railroad Company.

NOTE 7.

Chicago & West Michigan Railway Company 5% Bonds, due  
1921. Amount outstanding \$5,758,000 and total that can now be issued.

First Mortgage on the following mileage:

LaCrosse to Traverse City . . . .	300.83
Berry to Big Rapids . . . .	51.60
Allegan to Pentwater . . . .	98.82
Mears to Hart . . . .	3.78
Cronje to Ottawa . . . .	6.25
Kirk to Muskegon . . . .	11.98
Fruitport Branch . . . .	1.76
South Horn Branch . . . .	5.11

480.13

14 *PERE MARQUETTE RAILROAD COMPANY.*

Subject only to \$19,000 Grand Rapids, Newaygo & Lake Shore Railroad 7% Bonds, due June 1, 1905, which are first mortgage on 10 miles Newaygo to White Cloud. See Note 9.

## NOTE 8.

Chicago & North Michigan Railway Company 5% Bonds, due 1931. Amount outstanding \$1,667,000, and total that can now be issued. First Mortgage on line:

Boardman Junction to Bay View . . .	79.02
Williamsburg to Elk Rapids . . .	9.51
	<hr/>
	88.53 miles.

## NOTE 9.

Grand Rapids, Newaygo & Lake Shore Railway Company 7% Bonds, due June 1, 1905. Amount outstanding \$19,000. First Mortgage on 10 miles Newaygo to White Cloud.

## NOTE 10.

Detroit, Grand Rapids & Western Railroad Company 4% Bonds, due April 1, 1946. Amount outstanding \$5,379,168.13. Total that can be issued \$5,380,000.

First Mortgage on the following mileage:

West Detroit to Grand Rapids . . .	146.64
Paines to Belding . . .	100.57
Grand Ledge to Big Rapids . . .	93.24
Strong to Kiddville . . .	9.28
Remus to Weidman . . .	13.36
Mecosta to Barryton . . .	11.17
Chippewa Lake Branch . . .	5.47
	<hr/>
	379.73 miles.

## NOTE 11.

The Michigan Equipment Company, Limited. Outstanding \$181,000, secured by 200 furniture cars, 325 box cars, 20 gondola cars and 6 locomotives.

NOTE 12.

The Western Equipment Company, Limited. Outstanding \$116,000, secured by 100 flat cars and 100 refrigerator cars.

NOTE 13.

Saginaw, Tuscola & Huron Railroad Company 4% Bonds, due February 1, 1931.

Amount outstanding and total authorized issue \$1,000,000.

First Mortgage on 65.79 miles Saginaw to Bad Axe and guaranteed by the Pere Marquette Railroad Company.

NOTE 14.

Chicago & West Michigan Railway Company 5% Scrip. Issued in part payment of coupons on C. & W. M. Ry. and C. & N. M. R. R. Coupons due 1894 to 1898.

NOTE 15.

Marquette Equipment Company, Limited. Outstanding \$119,000, secured by 200 coal cars.

## 5.

## Classification and Tonnage of Freight for the Year 1900.

CLASSIFICATION.	TONNAGE.	TOTAL TONNAGE.	PER CENT.	TOTAL PER CENT.
Miscellaneous . . . . .		311,625		5.49
Merchandise . . . . .		478,620		8.44
Ice . . . . .		39,832		.70
PRODUCTS OF AGRICULTURE:—		975,494		17.19
Grain . . . . .	290,799		5.12	
Flour . . . . .	109,664		1.93	
Other Mill Products . . . . .	76,994		1.36	
Hay . . . . .	180,516		3.18	
Fruit and Vegetables . . . . .	190,103		3.35	
Potatoes . . . . .	127,418		2.25	
PRODUCTS OF ANIMALS:—		114,347		2.01
Live Stock . . . . .	58,991		1.04	
Dressed Meats . . . . .	11,468		.20	
Other Packing House Products, . . . . .	7,711		.14	
Poultry, Game and Fish . . . . .	5,992		.10	
Wool . . . . .	3,110		.05	
Hides and Leather . . . . .	27,075		.48	
MANUFACTURES:—		624,757		11.01
Petroleum and Other Oils . . . . .	32,002		.56	
Sugar . . . . .	4,371		.08	
Iron, Pig and Bloom . . . . .	61,669		1.09	
Iron and Steel Rails . . . . .	62,578		1.10	
Other Castings and Machinery, . . . . .	56,372		.99	
Cement, Brick and Lime . . . . .	155,982		2.75	
Agricultural Implements . . . . .	12,434		.22	
Wagons, Carriages, Tools, etc., . . . . .	17,901		.32	
Wines, Liquors and Beers . . . . .	23,105		.41	
Household Goods and Furniture, . . . . .	60,177		1.06	
Other Manufactures . . . . .	138,166		2.43	
PRODUCTS OF FOREST:—		1,803,191		31.77
Lumber . . . . .	1,585,826		27.94	
Logs . . . . .	122,551		2.16	
Charcoal . . . . .	31,632		.56	
Shingles . . . . .	63,182		1.11	
PRODUCTS OF MINES:—		1,327,724		23.39
Anthracite and Bituminous Coal, . . . . .	1,112,721		19.60	
Stone and Sand . . . . .	164,026		2.89	
Salt . . . . .	50,977		.90	
Total . . . . .		5,675,599		100%

**G.**

Comparative Statement of Earnings and Expenses, 1900 and 1899.

RAIL AND MARINE EARNINGS.	1900.	1899.	INCREASE.	DECREASE.
From Freight . . . . .	\$5,540,188.87	\$4,862,473.73	\$677,715.14	
" Passenger . . . . .	2,414,103.30	2,165,685.22	248,418.08	
" Express . . . . .	104,934.26	110,254.99		\$5,320.73
" Mail . . . . .	219,723.80	213,322.39	6,401.41	
" Telegraph . . . . .	6,848.27	6,520.59	327.68	
" Miscellaneous . . . . .	10,313.17	10,537.57		224.40
	\$8,296,111.67	\$7,368,794.49	\$927,317.18	
<b>RAIL EARNINGS.</b>				
From Freight . . . . .	\$5,126,550.79	\$4,456,880.36	\$669,670.43	
" Passenger . . . . .	2,347,104.81	2,113,844.53	233,260.28	
" Express . . . . .	103,734.26	109,054.99		\$5,320.73
" Mail . . . . .	216,558.80	209,789.89	6,768.91	
" Telegraph . . . . .	6,848.27	6,520.59	327.68	
" Miscellaneous . . . . .	10,313.17	10,537.57		224.40
	\$7,811,110.10	\$6,906,627.93	\$904,482.17	
<b>MARINE EARNINGS.</b>				
From Freight . . . . .	\$413,638.08	\$405,593.37	\$8,044.71	
" Passenger . . . . .	66,998.49	51,840.69	15,157.80	
" Express . . . . .	1,200.00	1,200.00		
" Mail . . . . .	3,165.00	3,532.50		367.50
	\$485,001.57	\$462,166.56	\$22,835.01	
<b>EXPENSES.</b>				
General Expenses . . . . .	\$202,904.33	\$216,336.21		13,431.88
Maintenance of Way and Structures . . . . .	1,360,227.34	1,179,651.43	\$180,575.91	
Maintenance of Equipment . . . . .	1,048,127.31	785,934.16	261,193.15	
Conducting Transportation . . . . .	3,084,263.92	2,908,373.41	175,890.51	
Operating Marine Equipment . . . . .	373,178.13	346,151.74	27,026.39	
Taxes . . . . .	261,891.29	230,374.01	31,517.28	
	\$6,330,592.32	\$5,667,820.96	\$662,771.36	
Net Earnings . . . . .	\$1,965,519.35	\$1,700,973.53	\$264,545.82	
Interest Charges . . . . .	1,319,329.79	1,289,420.38	29,909.41	
Surplus . . . . .	\$646,180.56	\$411,553.15	\$234,636.41	
<b>Average Expense ratio, including Taxes . . . . .</b>	76.31	76.92		0.61
<b>Mileage of Road operated . . . . .</b>	1,821.29	1,843.95		22.66
Gross Earnings per mile . . . . .	\$4,555.07	\$3,996.20	558.87	
Operating Expenses per mile, . . . . .	3,475.88	3,073.74	402.14	
Net Earnings per mile . . . . .	\$1,079.19	\$922.46	156.73	
<b>Revenue Train Mileage, Fr't . . . . .</b>	3,211,422	3,135,436	75,986	
" " " Pass'r . . . . .	2,956,718	2,960,299		3.581
Earnings, Freight Train Mile, . . . . .	\$1.596	\$1.421	0.175	
" " " Pass'r Train Mile . . . . .	0.794	0.714	0.080	



## 7.

Comparative Detailed Statement of Operating Expenses for the  
Years 1900 and 1899.

GENERAL EXPENSES.	1900.	1899.	INCREASE.	DECREASE.
Salaries of General Officers . . . . .	\$58,084 32	\$60,641 25	. . . . .	\$2,556 93
" " Clerks and Attendants . . . . .	71,394 46	89,969 28	. . . . .	18,574 82
General Office Expenses and Supplies . . . . .	9,326 80	10,240 02	. . . . .	913 82
Insurance . . . . .	13,258 52	9,667 34	\$3,591 18	. . . . .
Law Expenses . . . . .	33,374 09	18,923 18	14,451 51	. . . . .
Stationery and Printing (Gen. Offices) . . . . .	10,839 59	5,377 28	5,462 31	. . . . .
Other General Expenses . . . . .	6,625 95	21,511 26	. . . . .	14,885 31
Total . . . . .	\$202,904 33	\$216,336 21	. . . . .	\$13,431 88
MAINTENANCE OF WAY AND STRUCTURES.				
Repairs of Roadway . . . . .	\$779,669 73	\$632,045 56	\$147,624 17	. . . . .
Renewals of Rails . . . . .	69,334 09	56,440 98	12,893 11	. . . . .
Renewals of Ties . . . . .	253,117 98	265,158 58	. . . . .	\$12,040 60
Repairs and Renewals of Bridges and Culverts . . . . .	100,425 31	46,223 00	54,202 31	. . . . .
Repairs and Renewals of Fences, etc. . . . .	35,590 15	42,756 10	. . . . .	7,159 95
Repairs and Renewals of Buildings and Fixtures . . . . .	90,384 63	103,966 97	. . . . .	13,582 34
Repairs and Renewals of Docks and Wharves . . . . .	7,863 16	14,072 71	. . . . .	6,209 55
Repairs and Renewals of Telegraph . . . . .	11,697 67	10,346 79	1,340 88	. . . . .
Stationery & Printing (Way & Struc.) . . . . .	1,836 12	1,175 69	660 43	. . . . .
Other Way and Structure Expenses . . . . .	10,312 50	7,465 05	2,847 45	. . . . .
Total . . . . .	\$1,360,227 54	\$1,179,651 43	\$180,575 91	. . . . .
MAINTENANCE AND EQUIP- MENT.				
Superintendence of Equipment . . . . .	\$23,760 34	\$21,540 31	\$2,220 03	. . . . .
Repairs and Renewals of Locomotives . . . . .	389,469 91	297,971 06	91,498 85	. . . . .
" " " Passenger Cars . . . . .	180,030 11	136,556 95	52,473 16	. . . . .
" " " Freight Cars . . . . .	33,336 55	285,129 94	97,196 61	. . . . .
" " " Work Cars . . . . .	14,496 04	14,293 01	203 03	. . . . .
" " " Shop Machin- ery and Tools . . . . .	22,549 68	9,788 86	12,760 82	. . . . .
Stationery and Printing (Equipment) . . . . .	3,662 92	2,670 44	992 48	. . . . .
Other Equipment Expenses . . . . .	22,421 76	18,783 59	3,638 17	. . . . .
Total . . . . .	\$1,048,127 31	\$780,934 16	\$267,193 15	. . . . .

7.

Comparative Detailed Statement of Operating Expenses for the  
Years 1900 and 1899.— *Continued.*

	1900.	1899.	INCREASE.	DECREASE.
<b>CONDUCTING TRANSPORTATION.</b>				
Superintendence, Transportation . . . . .	\$90,895 23	\$73,565 03	\$17,330 20	
Engine and Roundhouse Men . . . . .	511,414 79	469,483 44	41,931 35	
Fuel for Locomotives . . . . .	555,659 22	491,040 61	64,618 61	
Water Supply for Locomotives . . . . .	31,417 42	28,555 43	2,861 99	
Oil, Tallow and Waste for Locomotives, . . . . .	20,675 47	15,630 66	5,044 81	
Other Supplies for Locomotives . . . . .	9,095 56	7,066 64	2,028 92	
Train Service . . . . .	387,481 21	349,028 75	38,452 46	
Train Supplies and Expenses . . . . .	74,954 63	70,975 83	3,978 80	
Switchmen, Flagmen and Watchmen . . . . .	204,636 89	180,930 48	23,706 41	
Telegraph Expenses . . . . .	79,374 50	76,043 41	3,331 09	
Station Service . . . . .	508,641 99	454,936 20	53,705 79	
Station Supplies . . . . .	32,121 53	30,540 60	1,580 93	
Switching Charges . . . . .	44,765 01	25,805 78	18,959 23	
Car Mileage . . . . .	92,631 41	112,665 84		\$20,034 43
Hire of Equipment . . . . .	14,563 27	19,195 31		4,632 04
Loss and Damage . . . . .	23,646 87	42,216 70		18,569 83
Injuries to Persons . . . . .	23,752 83	55,080 56		31,327 73
Clearing Wrecks . . . . .	5,147 81	6,276 45		1,128 64
Advertising . . . . .	27,989 18	28,491 20		502 02
Outside Agencies . . . . .	75,172 39	73,890 34	1,282 05	
Commissions . . . . .				
Stock Yards and Elevators . . . . .				
Rents for Tracks, Yards and Terminals, . . . . .	207,075 14	240,053 84		32,978 70
Rents of Buildings and other Property . . . . .	517 53	3,970 76		3,453 23
Stationery and Printing (Transportat'n). . . . .	60,603 03	50,321 11	10,281 92	
Other Transportation Expenses . . . . .	2,031 01	2,548 44		517 43
Total . . . . .	\$3,084,263 92	\$2,908,373 41	\$175,890 51	
Total Rail Expenses . . . . .	\$5,695,522 90	\$5,091,295 21	\$604,227 69	
<b>LAKE TRANSPORTATION.</b>				
Operating Marine Equipment . . . . .	\$373,178 13	\$346,151 74	\$27,026 39	
Grand Total Rail and Lake . . . . .	\$6,068,701 03	\$5,437,446 95	\$631,254 08	

## 8.

## Gross Earnings, Operating Expenses, and Net Earnings by Months

Earnings.	January.	February.	March.	April.	May.	June.
Freight . . . . .	\$382,423.67	385,944.66	452,217.66	429,281.81	429,025.88	402,892.60
Passenger . . . . .	151,556.68	125,410.48	154,749.36	162,319.06	165,835.86	200,082.33
Express . . . . .	8,627.11	8,511.46	8,565.90	8,617.73	8,617.73	8,863.79
Mail . . . . .	17,595.93	17,689.89	17,880.84	17,493.91	17,460.84	17,377.43
Telegraph . . . . .	472.57	439.51	509.12	471.08	542.16	602.36
Miscellaneous . . . . .	460.69	343.87	1,012.63	662.78	735.20	846.90
Marine . . . . .	35,195.74	39,152.27	46,980.94	52,794.44	26,097.18	37,282.88
Total . . . . .	\$596,332.39	577,492.14	682,116.50	671,640.81	648,314.85	667,948.49

## Operating Expenses.

Conducting Transportat'n.	\$241,592.08	238,325.17	265,544.59	259,124.00	246,104.76	257,041.79
Maintenance of Equipm't.	79,026.77	79,817.61	96,570.29	87,940.00	74,932.01	80,367.62
Maintenance of Way & Structures . . . . .	88,174.91	88,069.60	91,436.98	98,207.66	122,148.12	136,081.94
General Expenses . . . . .	17,271.71	15,697.62	16,924.56	15,583.67	15,640.85	15,954.30
Marine . . . . .	23,595.35	26,379.15	34,807.44	31,497.96	31,982.79	28,438.98
Total . . . . .	\$449,660.82	448,289.15	505,283.86	492,353.29	490,808.53	517,884.63
Taxes . . . . .	18,470.54	16,811.18	19,635.78	20,404.64	22,231.55	21,139.01
Total Oper. Exp. & Taxes.	\$468,131.36	465,100.33	524,919.64	512,757.93	513,040.08	539,023.64
Net Earnings . . . . .	\$128,201.03	112,391.81	157,196.86	158,882.88	135,274.77	128,924.85

8.

for Year Ending December 31, 1900.

July.	August.	September.	October.	November.	December.	Total.	Per cent. of Earnings.
361,000.06	432,156.86	471,061.39	488,141.45	432,835.59	459,569.16	5,126,550.79	61.79
241,435.01	279,569.87	237,911.29	301,881.87	218,780.99	207,371.81	2,347,104.81	28.29
8,643.10	8,669.24	8,668.20	8,650.00	8,650.00	8,650.00	103,734.26	1.25
17,445.94	17,475.84	17,924.42	18,446.22	17,490.84	22,276.70	216,558.80	2.61
471.67	710.06	587.69	681.34	797.69	563.02	6,848.27	.08
856.60	903.60	1,209.54	2.25	1,090.58	998.48	10,313.17	.13
40,235.36	49,031.53	43,319.36	40,465.35	33,125.32	41,321.20	485,001.57	5.85
670,087.74	788,517.00	780,681.89	759,458.48	712,771.01	740,750.37	8,296,111.67	100.00

248,139.34	267,416.94	266,798.84	260,376.98	254,433.74	279,365.69	3,084,263.92	37.18
88,017.86	87,159.75	85,104.84	96,708.23	100,107.68	92,374.65	1,048,127.31	12.63
132,558.90	144,140.29	133,770.34	117,195.24	102,953.82	105,489.54	1,360,227.34	16.39
15,844.36	14,919.10	16,030.71	16,271.04	17,666.25	25,100.16	202,904.33	2.45
31,035.54	30,771.60	30,752.30	35,080.83	24,034.83	44,801.36	373,178.13	4.50
515,596.00	544,407.68	532,457.03	525,632.32	499,196.32	547,131.40	6,068,701.03	73.15
21,711.88	25,050.90	24,784.32	23,801.74	24,318.41	23,531.34	261,891.29	3.16
537,307.88	569,458.58	557,241.35	549,434.06	523,514.73	570,662.74	6,330,592.32	76.31
132,779.86	219,058.42	223,440.54	210,024.42	189,256.28	170,087.63	1,965,519.35	23.69

**9.****Freight Statistics, 1900.**

Earnings from freight traffic . . . . .	\$5,126,550 79
Number of tons of freight carried . . . . .	5,675,599
Number of tons of freight carried one mile . . . . .	639,329,323
Average distance per ton carried . . . . .	112.64 miles
Earnings per ton per mile . . . . .	cents 0.8019
Tons per loaded car . . . . .	13.8
Loaded cars per train . . . . .	14.2
Tons per freight train . . . . .	195.96
Earnings per freight train mile . . . . .	\$1.59
Earnings from steamers . . . . .	\$413,638.08
Tons of freight . . . . .	897,728
Average per ton . . . . .	cts. 51.224

**10.****Passenger Statistics, 1900.**

Earnings from passenger traffic . . . . .	\$2,347,104.81
Number of passengers carried . . . . .	2,853,495
Total passengers carried one mile . . . . .	105,760,378
Average distance per passenger carried . . . . .	37.06 miles
Average earnings per passenger mile . . . . .	cents 2.18
Earnings from steamers . . . . .	\$66,998.49
Passengers carried . . . . .	30,316
Average per passenger . . . . .	\$2.21

---

Gross earnings per revenue train mile . . . . .	\$1.26
Expenses and taxes per revenue train mile . . . . .	.96
Net earnings per revenue train mile . . . . .	.30

II.

STATEMENT OF MILEAGE.

	Main Track.	Branch Track.	Business Producing Branches.	Sidings.
<b>Toledo Division.</b>				
Alexis to Saginaw . . . . .	130.75			69.33
Ottawa Yards . . . . .				12.31
Raisin to Warner . . . . .		2.97		
Horton to Fostoria . . . . .		19.51		1.42
Saginaw Belt Line . . . . .		10.14	1.71	18.30
Jamestown Branch . . . . .		5.26		.64
Zilwaukee Branch . . . . .		2.51		3.50
West Shore Branch . . . . .		1.68		3.07
	130.75	42.07	1.71	108.57
<b>Bay City Division.</b>				
Saginaw to Bay City . . . . . (Including Loop Line)	17.77			10.98
Crow Island Branch . . . . .		1.55		.59
Bay City Belt Line — Leased . . . . .		6.25		5.53
	17.77	7.80		17.10
<b>Ludington Division.</b>				
Saginaw to Ludington . . . . .	137.65		9.64	55.04
Coleman to Mt. Pleasant . . . . .		14.78		1.59
Coleman to Beaverton . . . . .		11.06	7.91	3.08
Clare to Leoto . . . . .		27.00		4.43
	137.65	52.84	17.55	64.14
<b>Manistee Division.</b>				
Merritt to Manistee . . . . .	27.06		4.40	7.15
<b>Port Huron Division.</b>				
Saginaw to Port Huron . . . . .	90.30			18.67
Port Huron to Almont . . . . .		34.09		3.79
				22.46
<b>Port Austin Division.</b>				
Port Huron to Grindstone City . . . . .	92.33			12.53
Palms to Harbor Beach . . . . .	18.30			1.95
	110.63			14.48
<b>Saginaw, Tuscola and Huron Division.</b>				
Saginaw to Bad Axe — Leased . . . . .	65.79			17.91

## STATEMENT OF MILEAGE—Continued.

	Main Track.	Branch Track.	Business Producing Branches.	Sidings.
<b>Petoskey Division.</b>				
Grand Rapids to Traverse City . . .	148.55		2.74	36.07
Williamsburg to Elk Rapids . . .		9.51	1.26	3.69
Clary to Honor . . . . .		9.62		1.80
Rapid City to Stratford—Leased . .		32.90	5.42	6.57
Ironton Branch . . . . .		1.38		
Gerber Branch . . . . .			3.43	.45
Finch Creek Branch . . . . .			3.34	.30
Essex Branch . . . . .			2.69	.36
Boardman Junction to Bay View . .	79.02			17.30
	227.57	53.41	18.88	66.55
<b>Big Rapids Division.</b>				
Berry to Big Rapids . . . . .	51.98			4.95
<b>Muskegon Division.</b>				
Allegan to Pentwater . . . . .	98.82			27.78
Mears to Hart . . . . .		3.78		2.18
Cronje to Ottawa Beach . . . . .		6.25		.96
Kirk to Muskegon . . . . .		11.98		5.11
Fruitport Branch . . . . .		1.76		.44
South Horn Branch . . . . .		5.11		6.57
North Horn Branch . . . . .			2.28	.95
Belt Line . . . . .			1.15	1.13
	98.82	28.88	3.43	45.12
<b>Detroit Division.</b>				
Delray to Grand Rapids (Exclusive of M. C. track, Lansing to No. Lansing)	146.68			36.99
West Detroit to Oak . . . . .		8.49		4.14
Freeport to Elmdale—Leased . . .		6.47		.81
College Branch . . . . .			1.70	.37
Reeds Lake Branch . . . . .			2.54	.57
	146.68	14.96	4.24	42.88
<b>Saginaw Division.</b>				
Elmdale to Paines (Includes 22.47 miles, Elmdale to Belding—Leased) . . .	123.04			22.86
Town Line Lake Branch . . . . .			2.38	.34
	123.04		2.38	23.20
<b>Ionia Division.</b>				
Grand Ledge to Big Rapids . . . .	93.24			23.98
Strong to Kiddville . . . . .		9.28		.49
Remus to Weldman . . . . .		13.36		1.57
Mecosta to Harryton . . . . .		11.17		2.69
Rodney to Chippewa . . . . .		5.47		.78
Lyons Branch . . . . .			.99	.40
Sterling Branch . . . . .			1.59	.07
	93.24	39.28	2.58	29.98



# PERE MARQUETTE RAILROAD COMPANY.

25

## STATEMENT OF MILEAGE — Continued.

	Main Track.	Branch Track.	Business Producing Branches.	Sidings.
La Crosse Division.				6.38
La Crosse to New Buffalo . . . . .	37.61			
Chicago Division.				49.90
New Buffalo to Grand Rapids . . . . .	114.67			
Totals . . . . .	<u>1,473.56</u>	<u>273.33</u>	<u>55.17</u>	<u>520.77</u>
Leased Lines Operated Jointly with Other Companies.				
Lansing to North Lansing (M. C. R. R.),	1.04			
Mershon to Paines (M. C. R. R.) . . . . .	6.70			
Alexis to Toledo (A. A. R. R.) . . . . .	6.63			
Third St. to 18th, Detroit (F.S.U.D.Co.),	1.36			
Delray to 18th St., Detroit (D. U. R. R., D., & S. Co.) (One main track owned by Pere Marquette R.R. Co. Sidings owned jointly with Wabash R. R. Co.),	3.24			3.44
	<u>18.97</u>			
12th St. Yards, Detroit (Owned by Pere Marquette R. R. Co., used jointly) . . . . .				5.51
				<u>8.95</u>
Total Sidings . . . . .				<u>529.72</u>
Owned Jointly with Other Companies.				
Detroit and Mackinac Bridge, Bay City,	.26			
Leased to Other Companies.				
Bay City Belt Line (to M. C. R. R. Co.)		1.88		<u>2.18</u>

## RECAPITULATION.

Main Track . . . . .	1,473.56
Branches . . . . .	273.33
Business Producing Branches . . . . .	55.17
Leased Lines operated jointly with other Companies . . . . .	18.97
Owned jointly with other Companies . . . . .	.26
Total Main Track and Branches . . . . .	<u>1,821.29</u>
Sidings . . . . .	<u>529.72</u>
Total Track . . . . .	<u>2,351.01</u>
Leased to other Companies: —	
Bay City Belt Line (To M. C. R. R. Co.) . . . . .	1.88
Bay City Belt Line Sidings (To M. C. R. R. Co.) . . . . .	2.18

1070

**12.****EQUIPMENT.**

December 31, 1900.

Locomotives . . . . .	224
Passenger cars . . . . .	308
Express and baggage cars . . . . .	63
	<u>271</u>
Box cars . . . . .	4,347
Stock cars . . . . .	91
Platform and gondola cars . . . . .	3,506
Way and cabin cars . . . . .	101
Miscellaneous: Tools, kitchen, water supply, wood, cinders, derricks, pile drivers, snow plows, etc. . . . .	81
	<u>8,126</u>

**1071**

LAND DEPARTMENT.

DETROIT, MICH., January 1, 1901.

TO CHARLES MERKIAM, *Treasurer.*

Herewith I submit statement of the business of the Land Department during the year 1900:—

There was sold by the Land Commissioner 2,001<sup>81</sup>/<sub>100</sub> acres at an average price of \$6.05 per acre, amounting to \$12,111.34.

The receipts during 1900 from land sales and land contracts were as follows :—

Principal	.	.	.	.	.	.	.	.	.	\$15,684	51
Interest	.	.	.	.	.	.	.	.	.	4,968	93
										\$20,853	44

Payments have been made for Taxes and

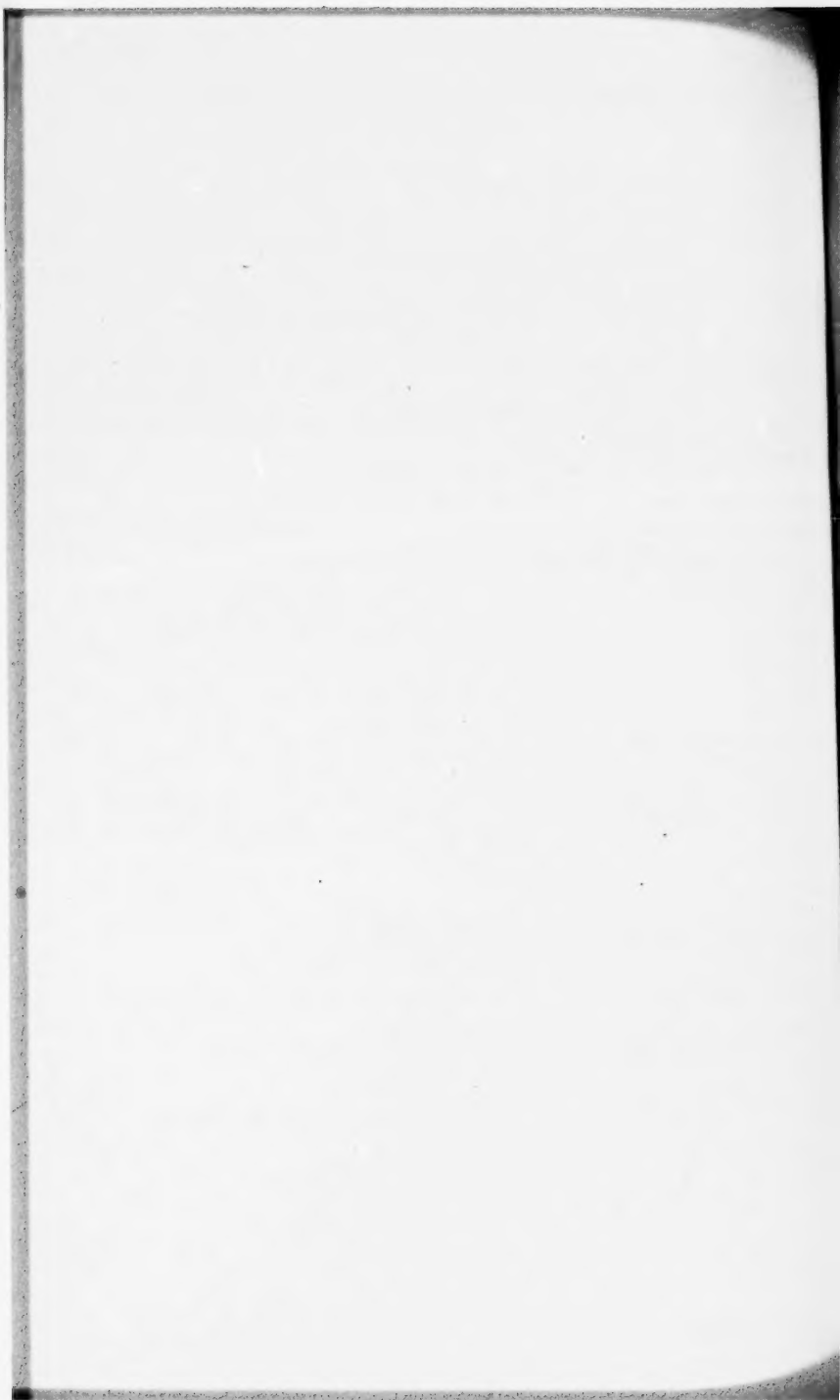
Sundry Expenses . . . . .	\$7,884 35	
Expenses of Land Commissioner's Office . .	1,200 00	
Trustee and Clerical Services . . . . .	375 00	\$9,459 35
Balance paid to Charles Merriam, Treasurer . .		11,394 09
		<u>\$20,853 44</u>

**Bills Receivable on hand December 31, 1900:—**

Principal	\$73,314 59	
Interest	10,208 89	\$83,523 48

There remain unsold at this date 36,595<sup>76</sup>/<sub>100</sub> acres of land.

WILLIAM W. CRAPO,  
*Trustee.*



*Ex 2. June 8. 1904*

# SECOND ANNUAL REPORT

OF THE

## PERE MARQUETTE RAILROAD COMPANY,

FOR THE FISCAL YEAR ENDING

DECEMBER 31, 1901.

---

BOSTON:

T. W. RIPLEY CO., PRINTERS.

1902.

**1074**



# PERE MARQUETTE RAILROAD COMPANY.

## DIRECTORS.

WM. W. CRAPO . . . . .	NEW BEDFORD, MASS.
NATHANIEL THAYER . . . . .	BOSTON, "
OLIVER W. MINK . . . . .	" "
JOHN M. GRAHAM . . . . .	" "
WALTER HUNNEWELL . . . . .	" "
FREDERICK H. PRINCE . . . . .	" "
CHARLES MERRIAM . . . . .	" "
MARK T. COX . . . . .	NEW YORK.
THOS. F. RYAN . . . . .	" "
CHARLES M. HEALD . . . . .	DETROIT, MICH.
STANFORD T. CRAPO . . . . .	" "

## EXECUTIVE COMMITTEE.

WM. W. CRAPO, CHAIRMAN.

NATHANIEL THAYER.

OLIVER W. MINK.

THOS. F. RYAN.

MARK T. COX.

FREDERICK H. PRINCE.

## OFFICERS.

WM. W. CRAPO . . . . .	CHAIRMAN OF THE BOARD.
CHARLES M. HEALD . . . . .	PRESIDENT.
JOHN M. GRAHAM . . . . .	VICE-PRESIDENT.
MARK T. COX . . . . .	VICE-PRESIDENT.
CHARLES MERRIAM . . . . .	SECRETARY AND TREASURER.
STANFORD T. CRAPO . . . . .	GENERAL MANAGER.
J. E. HOWARD . . . . .	AUDITOR.
A. PATRIARCHE . . . . .	TRAFFIC MANAGER.

## GENERAL OFFICES.

FORT STREET UNION DEPOT, DETROIT, MICH.

## STOCK TRANSFER OFFICES.

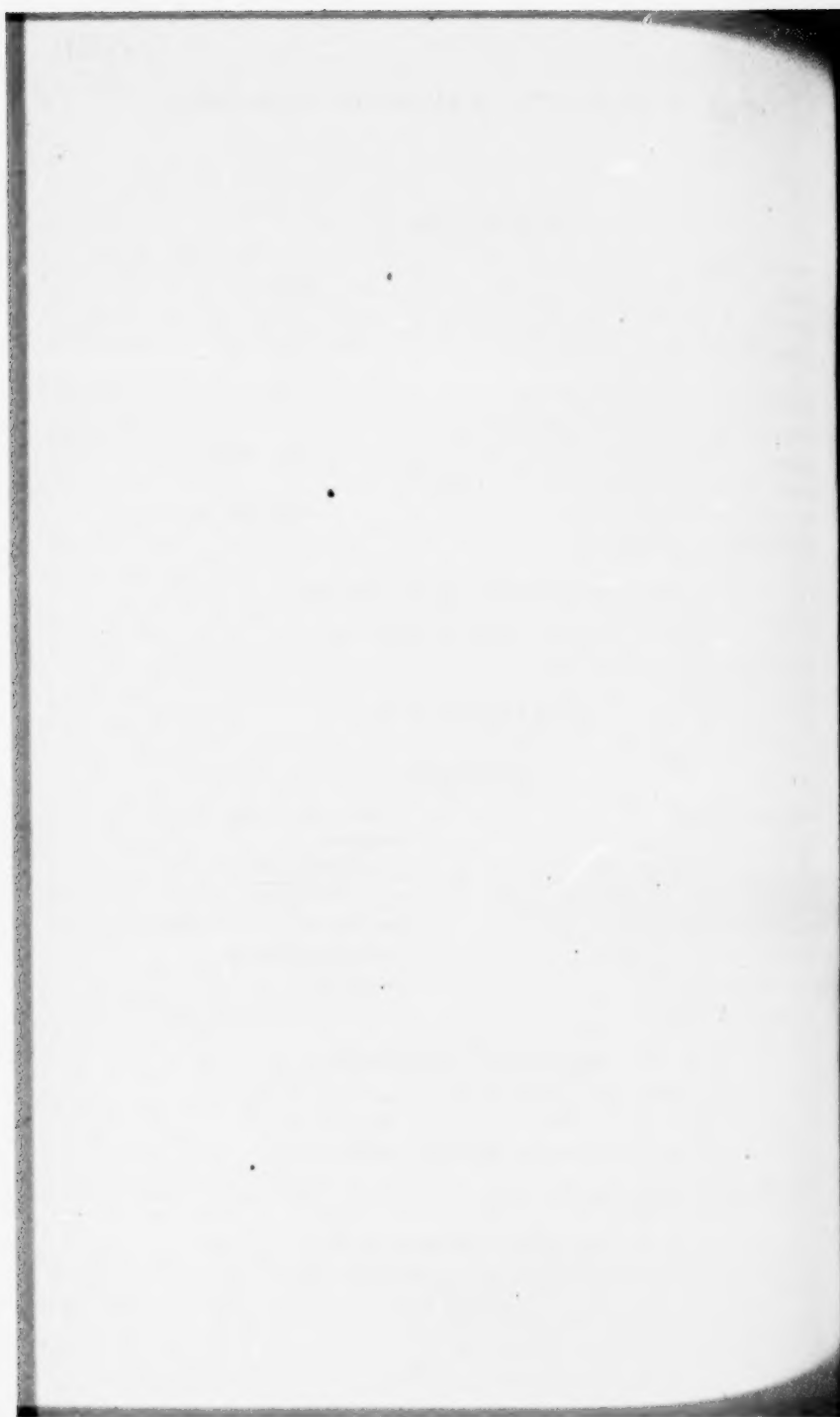
50 STATE STREET, BOSTON.

40 WALL STREET, NEW YORK.

## ANNUAL MEETING.

First Wednesday in May, at Detroit, Mich.





## SECOND ANNUAL REPORT.

DETROIT, MICH., April 24, 1902.

*To the Stockholders of the*

*Pere Marquette Railroad Company:—*

Herewith is presented the statement of the operations of the Company for the year ended December 31, 1901.

### MILEAGE.

The mileage of the railroads owned and operated by the Pere Marquette System, the main lines of which extend from Ludington, Mich., to Toledo, Ohio, and from Detroit, Mich., to Grand Rapids, Mich., and from Bay View, Mich., to New Buffalo, Mich., is as follows :

	Miles.	Increase.
Owned . . . . .	1,655.49	13.54
Controlled by leases . . . . .	104.94	
Total mileage owned and controlled . . . . .	1,760.43	13.54
Trackage rights over railroads owned by other Companies . . . . .	18.97	
Owned jointly with other Companies . . . . .	.26 19.23	
Total mileage operated . . . . .	1,779.66	13.54

The increase in mileage was caused by the construction of the Greenville—Stanton cut-off, a distance of 12.19 miles and by main line "Y" connections, 1.35 miles, aggregating 13.54 miles.

### EARNINGS AND EXPENSES.

The results of operations are shown in the following statements, which include the earnings and expenses of Leased Lines and Steamers.

## PERE MARQUETTE RAILROAD COMPANY.

Gross Earnings . . . . .		\$9,201,175	20
Operating Expenses . . . . .		6,828,039	60
Net Earnings from Operation . . . . .		\$2,373,135	60
Less Taxes . . . . .		282,172	42
Net Income . . . . .		\$2,090,963	18
Interest on Funded Debt . . . . .	\$1,356,388	74	
Equip't Sinking Fund Payments, . . . . .	152,500	00	1,508,888 74
Surplus . . . . .		\$582,074	44
Dividend on Preferred Stock, excluding 14,878 shares in hands of Trustees appointed under readjustment plan :			
2% paid August 15, 1901 . . . . .	\$210,202	00	
2% paid February 15, 1902 . . . . .	210,244	00	420,446 00
			\$161,628 44
Add net proceeds from Land Department . . . . .		50,519	49
Balance credited to General Improvement Fund . . . . .		\$212,147	93
Ratio of Operating Expenses to Earnings—			
Exclusive of Taxes . . . . .			74.21%
Including Taxes . . . . .			77.27%

The following Statement shows the Comparison of Earnings and Expenses for 1901 and 1900 :

	1901.	1900.	INCREASE.
Gross Earnings . . . . .	\$9,201,175 20	\$8,296,111 67	\$905,063 53
Operating Expenses . . . . .	6,828,039 60	6,068,701 03	759,338 57
	\$2,373,135 60	\$2,227,410 64	\$145,724 96
Taxes . . . . .	282,172 42	261,891 29	20,281 13
Net Earnings . . . . .	\$2,090,963 18	\$1,965,519 35	\$125,443 83
Interest Charges . . . . .	1,356,388 74	1,319,329 79	37,058 95
Equip't Sinking Fund Pay'ts . . . . .	152,500 00		152,500 00
Surplus . . . . .	\$582,074 44	\$646,189 56	Dec. \$64,115 12

# PERE MARQUETTE RAILROAD COMPANY.

742

7

	1901.	1900.	Increase.
Percentage of Expenses to Earnings (exclusive of Taxes) . . . .	74.21	73.15	1.06
Percentage of Expenses to Earnings (including Taxes) . . . .	77.27	76.31	.96

The following expenditures have been made for betterments and are included in the amounts charged to operating expense, instead of to cost of property : —

New stone and steel bridges . . . .	\$18,335.88
New sidings . . . . .	55,413.11
Rebuilding 180 miles of main line, exclusive of rail . . . . .	57,856.68
New buildings and docks . . . . .	24,324.39
Remodeling Steamer No. 5 . . . . .	20,179.41
New switch engine . . . . .	6,433.27
Real estate . . . . .	3,114.25
	<u>\$185,656.99</u>

By vote of the Directors, the surplus earnings of the road for the year, amounting to . . . . . \$161,628.44  
together with the net receipts from the Land  
Department for the year 1901, amounting to 50,519.49  
a total of . . . . . \$212,147.93  
have been transferred to General Improvement Fund, to be  
expended for betterments.

The remaining assets of the Land Department are conservatively estimated at \$115,000.00. (See the Trustee's statement appearing on the last page of this report.)

## EARNINGS.

The gross earnings of your property for the year 1901 aggregate \$9,201,175.20, an increase of \$905,063.53 over the year of 1900, equal to 10.9%, and the expenses, exclusive of taxes, have increased \$759,338.57, equal to 12.5%, showing an increase in net earnings from operations of \$145,724.96, equal to 6.5%.

In explanation of the percentage of increase in expenses being greater than the percentage of increase in gross earnings, it should

be borne in mind that \$185,656.99 were expended for betterments, which was charged direct to operating expenses. The expenses were unavoidably increased by reason of the extensive changes and improvements which were being made in grade and alignment in the main line between Ludington and Toledo, causing delay in the handling of the regular traffic, resulting in greatly increased cost. The amount expended for betterments adds 1.4% to the percentage of increase in expenses.

### EXPENSES.

#### MAINTENANCE OF WAY AND STRUCTURES.

The amount expended for the maintenance of way and structures was \$1,586,996.52, an increase of \$226,769.78 or 16.67%. This increase is principally accounted for by the building of additional tracks, increased amounts expended for renewal of ties, and repairs and renewals of buildings and fixtures, and increase in cost of material and labor.

A summary of the work done is shown herewith:

#### NEW STEEL RAIL LAID.

New steel on hand January 1st, 1901	1.680 miles.	
New steel received during the year	211.367 "	
		213.047 miles.
The disposition of this rail is as follows:		
Laid on Ludington Division	75.446 miles.	
" " Toledo	17.245 "	
" " Saginaw	33.840 "	
" " Chicago	4.488 "	
" " Petoskey	17.760 "	
" " Detroit	23.715 "	
On new road between Greenville and Stanton	12.195 "	
On hand January 1st, 1902	28.358 "	
		213.047 miles.

The old steel which was released by the new steel was disposed of as follows:

Fifty-four miles was used to replace the poor rail in branch lines, and the poor rail thus released was sold as scrap. Forty-seven miles was used in laying new sidings; 12 miles of it is in temporary use where changes in grade have been made; 7 miles has been leased to individuals; 38 miles is still on hand, the balance having been sold as scrap.

The track was further improved by ballasting 127 miles, by constructing 9 miles of new passing sidings and by the laying of 93,924 cross-ties. There were also 38½ miles of new sidings and extensions built.

### BUILDINGS.

The following new buildings were constructed:—Junction eating house at Baldwin; coaling stations at Flint, Plymouth and Grand Ledge; engine houses at Bay City, Plymouth and Baldwin; passenger stations at Thompsonville, Grant and Bay City; ice house and warehouse at Grand Rapids; power house, pump house and reservoir at Ottawa Beach; new shed and casting house for store department at Saginaw; and large addition to the freight house at Detroit, doubling its capacity.

Expensive repairs were made to the depot buildings at Carsonville, Flint, Greenville, Milford, Plymouth, Saginaw and LaPorte; to the shops, engine houses, scales and elevators at Ionia, Muskegon, Grand Rapids and Ludington; and to the dock and warehouse at Milwaukee; to the depot building and grounds at Pt. Aux Barques, and to the tanks and pumps at Oak, Watervliet and New Boston.

Fifty-six station buildings were painted and repaired.

Nine station platforms were repaired and replaced with concrete.

### BRIDGES.

New bridges were constructed at Beaverton, Flint, Cheboyganing, Belvidere, Holland, Kent City and Belding.

Bridges at St. Joseph, Riverside, Hartford, McDonald, Newaygo, Whitehall, Shelby, Green Oak, Howell, Delta, Whitneyville, Rouge River, Bridgeport, North Bradley, Evart, Mayville, Yale, Elkton, Filion, Wayne, Plymouth, Grand Ledge, Ionia and Bay City, five bridges on the Mt. Pleasant Branch, and the bridge over the Michigan Central Railroad near Detroit, received general repairs.

One hundred and thirty-five feet of bridge openings in the track were filled and permanently closed.

Open culverts at Avoca, Plymouth, Milford, Farwell, Merahon, Wixom, Saginaw City Ditch and Rougemere were rebuilt with iron pipe.

Thirty-nine tile culverts were replaced with iron pipe, 9 with vitrified pipe, 9 were renewed with timber and 11 new cast-iron culverts were constructed.

New signal and interlocking devices were installed at New Richmond, St. Joseph, Charlevoix, Sebewaing, Alexis, Interlochen, Fordney, Trowbridge, Saginaw, Hartford and Malta.

New water tanks were built at Plymouth, Clio, Bay Port, Big Rapids, Flint, Grand Ledge, Kaleva, McGregor, Rapid City and Oak.

#### MAINTENANCE OF EQUIPMENT.

The cost of maintenance of equipment amounted to \$1,038,197.85, a decrease of \$9,929.46, as compared with the previous year.

#### LOCOMOTIVES.

Thirty-one new engines were purchased and 1 new switch engine was built at the Company's shops during the year, making a total addition of 32 new engines. There were sold during the year 2 light engines unsuited for our service and 4 engines were scrapped, making a net addition to the locomotive equipment of 26, showing a total number of locomotives on hand December 31st, 1901, of 250 as against 224 last year.

The total number of engines repaired in the Company's shops during the year was 241, of which 3 were rebuilt; 178 received heavy repairs; 60 received light repairs; 175 had their tires turned down; 55 had new tires applied; 183 had flues re-set; 26 received new flues; 3 had new frames applied; 14 had new fire boxes; 11 had new tanks; 5 had new tank frames; 24 had new drive-wheel centers; 64 had new drive-wheel axles; 24 had new driver brakes; 29 had new cabs; 29 had new cylinders; 32 had new asbestos lagging; 104 had new pilots; 133 had new piston rods; 55 had new ash-pans; 104 had new stacks; and 184 were repainted.



### PASSENGER CARS.

There were three new parlor cars and two new passenger coaches purchased during the year. One passenger car was destroyed and two officer's cars, unfit for further use as such, and one baggage car were changed into cabooses, leaving a net increase to the passenger equipment of one car, making a total of 272 as against 271 last year.

Two hundred and fifty-one passenger cars were turned out of the Company's shops during the year, of which 4 were rebuilt, 125 received heavy repairs and 122 received light repairs. Twenty-one coaches were painted; 216 were repainted and varnished; 26 were re-upholstered with plush; 11 were re-upholstered with rattan, 6 had new seats applied; 24 had new trucks applied; 3 were equipped with acetylene gas; 17 received new head linings; 34 were equipped with Gould Continuous Buffer; 5 were equipped with wide vestibules; and 7 were equipped with quick action brakes.

Nineteen hundred and thirty-six new cast wheels, 322 new steel wheels and 621 new axles were applied.

### FREIGHT CARS.

The following freight cars were purchased during the year: 1,000 box cars, 100 coal cars, 10 caboose cars and 44 work cars.

In addition, there were built in the Company's shops 1 box car, 8 flat cars, 4 coal cars, 13 caboose cars and 6 work cars, and, in addition, 3 passenger cars were changed to caboose cars, making a total addition to the freight car equipment of 1,189 cars.

There were destroyed and scrapped during the year 49 box cars, 4 furniture cars, 6 charcoal cars, 81 flat cars, 11 coal cars, 14 caboose cars and 3 miscellaneous cars, a total of 168, making a net addition to the freight car equipment of 1,021 cars. Total December 31, 1901, 9,280, as against 8,259 December 31, 1900.

Eighteen thousand, six hundred and seventy-seven freight cars were turned out of the Company's shops, of which 329 were rebuilt, 3,590 received heavy repairs and 14,758 received light repairs. Twenty hundred and twenty-four were painted; 72 were equipped with air brakes; 573 were equipped with Butler attachments; 380 were equipped with new decks; 498 were equipped with new roofs;

14 had air-brakes repaired; 3,096 had new draft timbers applied; 952 had new center sills applied; 627 had new side sills applied; 417 had new intermediate sills applied and 1,224 had new end sills applied.

Seven hundred and sixty-one automatic couplers, 185 new axles and 4,744 new wheels were applied.

Fifteen new pieces of machinery were purchased for the shops at Saginaw, Ionia and Muskegon.

### CONDUCTING TRANSPORTATION.

The cost of conducting transportation amounted to \$3,581,268.51, an increase of \$497,004.59 or 16.11%. This is accounted for principally by the increase in traffic handled, both freight and passenger, the increase in tons moved one mile being 23.72%. The increase in freight train mileage was 10.92%, and the revenue tons per train mile were increased 15 tons or 7.24%.

The increase in the number of passengers carried one mile is 17%, while the increase in passenger train miles is only 8.8%.

There was also an increase in the cost price of coal and in the rate of pay of enginemen, trainmen, switchmen and stationmen.

### MARINE EQUIPMENT.

The marine equipment consists of two steel car ferries of thirty cars capacity each, one wooden car ferry of twenty-six cars capacity, and four combination freight and passenger steamers. One of the steel car ferries was added to the fleet during the year, and an order placed for another for delivery in the fall of 1902.

### GENERAL REMARKS.

The work of changing the grade of the main line between Ludington and Toledo was carried on during the entire year. The changes at Plymouth, Northville, Novi and Grand Blanc were nearly completed, and now require merely the addition of ballast and trimming off, which will be done during the spring of 1902. Considerable of the work between Ewart and Sears in changing the grade

and alignment was done during the year. It is expected to complete this work by the early fall of 1902.

The new road which was built between Greenville and Stanton shortens the line operated between Grand Rapids and Saginaw twenty-one miles, and should decrease the cost of operating this division.

The work on the extension of the Allegan Branch from its terminus into the village of Allegan was prosecuted during the past year, and will be completed and ready for use in the early part of this year.

The new work which has been done and is in progress is in conformity with the policy established by your management to so improve the physical condition of your property, particularly those divisions over which the heaviest traffic is handled, that the cost of operation may be reduced.

In carrying out this policy, large expenditures have been made in replacing wooden bridges with permanent structures of steel and cement; real estate has been purchased at various points to relieve congestion and consequent expense at junctions and termini; new sidings and passing tracks have been built to facilitate the movement of trains; new steel has been laid and locomotives, freight cars and passenger cars added to your equipment, — so that the physical condition of the property shows a marked improvement over the preceding year.

In addition, a new car ferry, with a capacity of 30 cars, has been added to the fleet. This will add still further to the earning capacity of your Company in handling the through traffic of the Northwest.

We have been fortunate in not having had any serious accidents or drawbacks during the year just passed, with the exception of the accident to your wooden car ferry No. 16, which, while entering Ludington harbor on the night of December 21st last, during a high sea, struck on an unknown bar and was seriously damaged, making it necessary to strand the vessel. She was subsequently floated and towed to Milwaukee, where she is undergoing repairs in the dry dock. She was fully insured.

### CONSTRUCTION AND EQUIPMENT ACCOUNT.

During the year 1901 \$1,759,813.08 was added to Construction Account for the purchase of real estate; cost of changing grades and alignments at Plymouth, Northville, Novi, Grand Blanc, Ewart and Sears; for building a new short-line railroad from Greenville to Stanton; for building an extension to the freight house at Detroit; for the purchase of 1 locomotive, 100 coal cars, 100 box cars, 3 parlor cars and 2 café passenger cars; for the purchase of a new steel car ferry and 10,976.033 tons of new steel rail.

This amount of \$1,759,813.08, however, was reduced by various credits in the sum of \$33,335.59, so that the net increase to Construction Account for the year 1901 amounts to \$1,726,477.49, leaving the amount charged to this account December 31, 1901, \$54,829,180.64, as against \$53,102,703.15 on December 31, 1900.

### INVESTMENT ACCOUNT.

There was an addition of \$293,302.12 to this account during the year 1901, accounted for as follows:—

By transfer from open accounts of the mortgages on the property of the Charlevoix Improvement Company, \$60,000; by the construction of a new hotel, with necessary furniture and fixtures, new water plant and electric light station at Ottawa Beach, \$76,282.50; and by the purchase of real estate at Detroit, \$157,019.62.

The mortgage on the property of the Charlevoix Improvement Company covers the resort land and improvements thereon, consisting of a large summer hotel and other buildings, situated at Charlevoix on the line of your road. The operation of this hotel during the summer months adds materially to the attractive features of Northern Michigan, thereby increasing the revenue the railroad receives from summer tourists.

The construction of the hotel at Ottawa Beach was made necessary by the great demand for such a resort from residents of Chicago and Southern Ohio and Indiana, and this expenditure has resulted beneficially to the road in increased freight and passenger earnings.

The operation of the hotel itself netted your Company 6 per cent. on the investment, in addition to freight and passenger earnings, and it should be a permanent source of income.

The land at Detroit was necessary to increase the terminal facilities at that point, to properly care for the large increase in business.

### **GENERAL IMPROVEMENT FUND.**

Two hundred and eighty-seven thousand six hundred and forty dollars and sixty-four cents were added to this fund during the year 1901, making the total amount credited to this fund at the close of the year 1901 \$428,432.83. From this total of \$428,432.83 there was expended \$255,531.89, leaving an available balance of \$172,900.94 for any improvements in 1902 or thereafter.

A detailed statement of this account will be found with the Auditor's report.

This amount of \$255,531.89, added to the amount of \$185,656.99 previously referred to and charged to operating expense, shows a total of \$441,188.88 spent upon your property for its permanent improvement, without increasing its funded debt.

### **BONDED DEBT.**

Holly, Wayne & Monroe Railway Company 8% bonds, due January 1, 1901, were paid, amounting to \$1,000,000.

Holders of Chicago & West Michigan Railway Company 5% coupon scrip, amounting to \$663,902.50, issued in part payment of coupons due 1894 to 1898 on Chicago & West Michigan Railway Company and Chicago & North Michigan Railroad Company 5% bonds, were notified that, in conformity with the terms of said scrip, it would all be called for payment, at par, November 1, 1901, and December 2, 1901. Of this amount there remained outstanding January 1, 1902, \$71,810, upon which interest had ceased.

To provide for above payments and for the cost of reducing grades, for new car ferry boat, cars and locomotives, new construction, etc., \$2,500,000 of the new consolidated mortgage 50-year 4% gold bonds of the Pere Marquette Railroad Company, due 1951, have been sold, but our interest charges due to the sale of these bonds will be increased only \$27,000 per annum on account of the reduction of the rate of interest to 4% per annum on \$1,000,000 of our bonded debt, formerly represented by Holly, Wayne &

Monroe 8% bonds (which amount was provided by the sale of \$1,000,000 Flint & Pere Marquette Railroad Company 6% bonds, the interest on same being reduced to 4%), and by reduction of 1% on the \$664,000 represented by Chicago & West Michigan Railway Company coupon scrip, the total reduction in former interest charges amounting to \$46,000 per annum.

Eight hundred and seventy-nine thousand dollars Marquette Equipment Company, Limited, 5% bonds were sold during the year and to the date of this report, increasing the issue to \$998,000, which has been decreased during the year by the cancellation of \$74,000 bought at par through the operation of the sinking fund, leaving outstanding at this time \$924,000.

For further information in regard to the affairs of the Company, reference is made to the following financial statements and reports of the Auditor; and, for the statement of the Land Department, to that of William W. Crapo, Trustee, on page 33.

Respectfully submitted,

CHARLES M. HEALD,

*President.*

## AUDITOR'S REPORT.

Mr. CHARLES M. HEALD, *President*,  
Detroit, Mich.

*Dear Sir*, — I herewith submit the accounts and statements of the Pere Marquette Railroad Company for the year ending December 31, 1901: —

- A. Condensed Balance Sheet.
- B. Profit and Loss Account.
- C. Bonded Debt.
- D. Construction Account.
- E. General Improvement Fund.
- F. Additions to Investment Account.
- G. Comparative Statement, Earnings and Expenses.
- H. Classification of Freight Tonnage.
- I. Comparative Statement of Operating Expenses.
- J. Gross Earnings, Operating Expenses and Net Earnings by months.
- K. Freight, Passenger, Marine and Miscellaneous Statistics.
- L. Mileage Statement.
- M. Equipment.

Yours truly,

J. E. HOWARD,  
*Auditor.*



## PERE MARQUETTE RAILROAD COMPANY.

## A.

## CONDENSED BALANCE SHEET, DECEMBER 31, 1901.

PROPERTY ACCOUNTS.		CAPITAL ACCOUNTS.	
Cost of Road, Construction and Equip't	\$54,839,180 64	Common Capital Stock	\$16,000,000 00
Equipment: Equipment Companies	1,183,000 00	Preferred Capital Stock	13,000,000 00
Investments	1,410,491 83	Funded Debt	29,447,978 13
AVAILABLE ASSETS.		CURRENT LIABILITIES.	
Cash and Bills and Accounts Receivable	734,904 48	Accrued Bond Interest	325,570 19
Material on hand	397,760 30	Unpaid Coupons	40,468 55
Open Accounts	807,699 42	Unpaid Vouchers and Pay Rolls	1,686,994 76
Trustees, Equipment Companies	60,959 48	Unpaid Taxes	256,957 04
		Unpaid Dividends (inc. Feb. 15, 1902)	211,968 00
		Sinking Funds, Equipment Bonds	60,959 48
			\$59,423,996 15

## B.

## PROFIT AND LOSS, YEAR ENDING DECEMBER 31, 1901.

Operating Expenses	\$6,828,039 60	Gross Earnings	\$9,201,175 20
Interest Charges	1,356,388 74		
Taxes	282,172 42		
Payments to Sinking Funds, Equip't Bonds	152,500 00		
Dividend No. 2, 2% on Preferred Stock	210,202 00		
Dividend No. 3, 2% "	210,244 00		
Balance carried to General Improvement Fund	161,628 44		
	\$9,201,175 20		\$9,201,175 20

Date.	When Due.	DESCRIPTION.	Amount.	Rate.	Annual Interest.
Jan'y 1, 1901	Jan'y 1, 1951	Pere Marquette Railroad Co. Consolidated Mortgage Gold Bonds. Authorized issue \$5,000,000. First mortgage on all the real estate and property of the Pere Marquette & R. Co. Subject to the following bonds issued by the Constituent Companies.	\$1,500,000 00	4%	\$60,000 00
Oct. 1, 1880	Oct. 1, 1920	Flint & Pere Marquette Railroad Co. Authorized issue, \$5,000,000. First mortgage upon 279.90 miles, Monroe to Ludington, Flint River Branch and Saginaw & Bay City Branch.	4,000,000 00	6%	240,000 00
Oct. 1, 1880	Oct. 1, 1920	Flint & Pere Marquette Railroad Co. (Reduced to 100%). Same as next bond described, except that interest is reduced to 6%.	1,000,000 00	4%	40,000 00
May 1, 1889	May 1, 1939	Flint & Pere Marquette Railroad Co. (Solidity). Authorized issue, \$2,500,000. First mortgage on 119.72 miles of branches, and second mortgage upon mileage covered by F. & P. M. First Mortgage noted above.	2,850,000 00	5%	142,500 00
April 1, 1889	April 1, 1939	Flint & Pere Marquette Railroad Co. (Pt. Huron Div.). Authorized issue, \$3,500,000. First mortgage on Port Huron Division, 235.02 miles.	3,500,000 00	5%	175,000 00
July 1, 1897	July 1, 1937	Flint & Pere Marquette Railroad Co. (Toledo Div.). Authorized issue, \$400,000. First mortgage on Toledo Division, 18.70 miles; also on the real estate, freight tracks and terminals with Ann Arbor R. R. at Toledo, Ohio.	400,000 00	5%	20,000 00
Oct. 1, 1897	\$20,000 annually.	Pere Marquette Transportation Co. Original issue, \$100,000. First mortgage on Car Ferry No. 15.	120,000 00	6%	7,200 00
Dec. 1, 1881	Dec. 1, 1921	Chicago & West Michigan Ry. Co. Authorized issue, \$575,000. First mortgage on the mileage formerly owned by the C. & W. M. Ry., 486.13 miles, except as stated next below.	5,758,000 00	5%	287,900 00
June 1, 1875	June 1, 1905	Grand Rapids, Newaygo & Lake Shore Railroad Co. First mortgage on ten miles Newaygo to White Cloud.	19,000 00	7%	1,330 00
May 1, 1901	May 1, 1931	Chicago & North Michigan Railroad Co. Authorized issue, \$1,667,000. First mortgage on line Boardman to Elk Rapids, 75.02 miles.	1,667,000 00	5%	83,350 00
April 1, 1897	April 1, 1946	Detroit, Grand Rapids & Western Railroad Co. Authorized issue, \$5,350,000. First mortgage on line formerly owned by the D. G. R. & W. R. R., 379.73 miles.	5,379,168 13	4%	215,166 72
Feb'y 1, 1900	Aug. 1, 1931	Saginaw, Tuscola & Huron Railroad Co. Authorized issue, \$1,000,000. First mortgage on line of S. T. & H. R. R., 65.79 miles.	1,000,000 00	4%	40,000 00
June 1, 1892	June 1, 1902	The Michigan Equipment Co., Ltd. Secured by 200 furniture cars, 325 box cars, 20 gondola cars and 6 locomotives.	157,000 00	6%	9,420 00
April 1, 1889	April 1, 1909	The Western Equipment Co., Ltd. Secured by 100 flat cars, and 100 gondola cars.	105,000 00	6%	6,300 00
Oct. 1, 1910	Oct. 1, 1910	The Marquette Equipment Co., Ltd. Secured by 900 box cars, 200 coal cars, 10 caboose cars and 17 locomotives.	981,000 00	5%	49,050 00
Various		Chicago & West Michigan Railway Co. Coupon Scrip. This Scrip has been all called in and interest on same has ceased.	71,810 00		
			\$59,427,978 13		\$1,414,216 72

## D.

## CONSTRUCTION ACCOUNT.

YEAR ENDING DECEMBER 31, 1901.

1901.

Jan. 1. To Balance

Additions during the year as follows:—		\$53,102,703 15
Discount on 1,000,000 F. & P. M. R. R. Co. 6% reduced to 4% bonds	\$10,000 00	
Discount on 2,500,000 P. M. R. R. Co. 4% bonds sold this year	212,500 00	
Recording Mortgage. P. M. R. R. Co. 4% bonds	1,330 37	
Engraving, Revenue Stamps and Countersigning 2,500,000 P. M. R. R. 4% Bonds	5,827 09	
Paid for Grandville Gravel Pit	2,078 60	
" Putnam Gravel Pit	3,038 40	
" Real Estate, Bay City	4,000 00	
" " Belding	2,500 00	
" " Grand Ledge	1,550 00	
" " Flint	4,910 00	
" " Plymouth	224 00	
" " Benton Harbor	500 00	
" " Milford	225 00	
" " C. & N. M. Right of Way	520 00	
" " Grand Rapids	101,578 38	
" " Toledo	9,451 50	
" " Lansing	15,780 00	
" " West Detroit	10,540 83	
" " Benton Harbor	2,057 75	
" Change of Grade, Plymouth, Northville and Novi,	130,339 46	
" " " Grand Blanc	91,665 11	
" " " Evart and Sears	70,280 37	
" New Road, Greenville to Stanton	163,807 17	
" New Car Ferry No. 17	336,266 15	
" Detroit Freight House Extension	38,283 02	
" New Equipment, Locomotives	25,591 50	
" " Freight Cars	142,535 38	
" " Passenger Cars	58,057 14	
" 10,976.033 tons New Steel Rail and Angle Bars @ \$28.63	314,375 86	1,759,813 08
		\$54,862,516 23

## CREDIT.

By Amounts received from Flint & Pere Marquette R. R., Collection Account	\$1,681 25	
Amounts received from Chicago & West Michigan Ry., Collection Account	835 36	
Amounts received from Det., Grand Rapids & Western R. R., Collection Account	3,567 92	
Transferred from C. & W. M. Ry. Co. Books: Township of Forest Home Bonds	\$6,375 00	
Township of Kearney Bonds,	6,375 00	
St. Louis Cooperage Co. Property	2,515 25	
G. R., K. & S. E. R. R. Account	11,767 64	27,032 89
Amounts transferred from D., G. R. & W. R. R. Books, C. R., K. & S. E. R. R. Acct.	218 17	33,335 59
Dec. 31. Balance		\$54,829,180 64

**E.**

**GENERAL IMPROVEMENT FUND.**

JANUARY 1, 1902.

1901.	By Balance Jan. 1, 1901	\$140,792 19
Feb.	Dividend No. 1 on Preferred Stock in hands of Readjustment Committee	59,644 00
Dec.	Readjustment Committee D., G. R. & W. R. P., Balance of Account	4,454 62
	W. W. Crapo, Land Commissioner, Net Receipts, 1900	11,394 09
	W. W. Crapo, Land Commissioner, Net Receipts, 1901	50,519 49
	Balance of Profit and Loss Account for year 1901	161,628 44
		<u>\$428,432 83</u>

Dec.	To New Passenger Accommodations	
	Steamer No. 5	\$26,123 23
	Flint Coaling Station	3,588 70
	Grand Rapids Ice House	3,219 55
	Plymouth Coaling Station	3,692 42
	Plymouth new Wye	2,250 04
	New Machinery and Tools	16,368 29
	New Sidings	33,111 09
	New Construction, Bridges	21,826 86
	New Construction, Buildings	30,831 70
	4000 tons Steel Rail and Angle Bars @ \$28.63	114,520 00
		<u>255,531 89</u>
	Balance Jan. 1, 1902	<u>\$172,900 94</u>

**F.**

**INVESTMENT ACCOUNT**

ADDITIONS DURING YEAR ENDING DECEMBER 31, 1901.

Charlevoix Improvement Co. Mortgage	\$48,000 00	
Dixon Mortgage, Charlevoix Improvement Co. Property	12,000 00	\$60,000 00
Ottawa Beach Property, Hotel Improvements, Water Supply and Pump House	\$47,677 05	
Lighting Plant	5,529 32	
Furniture and Fixtures	8,321 53	
	14,754 60	76,282 50
W. W. Crapo, Trustee, Detroit property owned jointly with Wabash Railroad Co.		157,019 62
		<u>\$293,302 12</u>

757

22

## PERE MARQUETTE RAILROAD COMPANY.

G.

## COMPARATIVE STATEMENT EARNINGS AND EXPENSES.

1901 AND 1900.

RAIL AND MARINE EARNINGS.		1901.	1900	INCREASE.	DECREASE.
From Freight . . . . .		\$6,257,373.30	\$5,540,188.87	\$717,184.43	
" Passenger . . . . .		2,573,936.62	2,414,103.30	159,833.32	
" Express . . . . .		130,503.10	104,934.26	25,568.84	
" Mail . . . . .		220,725.85	219,723.80	1,002.05	
" Telegraph . . . . .		7,290.39	6,848.27	442.12	
" Miscellaneous . . . . .		11,345.94	10,313.17	1,032.77	
		\$9,201,175.20	\$8,296,111.67	\$905,063.53	
RAIL EARNINGS.					
From Freight . . . . .		\$5,753,533.36	\$5,126,550.79	\$626,982.57	
" Passenger . . . . .		2,494,135.69	2,347,104.81	147,030.88	
" Express . . . . .		129,296.86	103,734.26	25,562.60	
" Mail . . . . .		217,605.85	216,558.80	1,047.05	
" Telegraph . . . . .		7,290.39	6,848.27	442.12	
" Miscellaneous . . . . .		11,345.94	10,313.17	1,032.77	
		\$8,613,208.09	\$7,811,110.10	\$802,097.99	
MARINE EARNINGS.					
From Freight . . . . .		\$503,839.94	\$413,638.08	\$90,201.86	
" Passenger . . . . .		79,800.93	66,998.49	12,802.44	
" Express . . . . .		1,206.24	1,200.00	6.24	
" Mail . . . . .		3,120.00	3,165.00		\$45.00
		\$587,967.11	\$485,001.57	\$102,965.54	
EXPENSES.					
General Expenses . . . . .		\$199,389.13	\$202,904.33		3,515.20
Maintenance of Way and Structures . . . . .		1,586,996.52	1,360,227.34	\$226,769.18	
Maintenance of Equipment . . . . .		1,038,197.85	1,048,127.31		9,929.46
Conducting Transportation . . . . .		3,581,268.51	3,084,263.92	497,004.59	
Operating Marine Equipment, Taxes . . . . .		422,187.59	373,178.13	49,009.46	
		282,172.42	261,891.29	20,281.13	
Total . . . . .		\$7,110,212.02	\$6,330,592.32	\$779,619.70	
Net Earnings . . . . .		\$2,090,963.18	\$1,965,519.35	\$125,443.83	
Interest Charges . . . . .		1,356,388.74	1,319,329.79	37,058.95	
Sinking Funds Equip't Bonds, Surplus . . . . .		\$734,574.44	\$646,189.56	\$88,384.88	
		152,500.00	*	\$152,500.00	
		\$582,074.44	\$646,189.56		64,115.12
Average Expense ratio, including Taxes . . . . .		77.27	76.31	0.96	
Excluding Taxes . . . . .		74.21	73.15	1.06	
Mileage of Road operated . . . . .		1,837.68	1,821.29	16.39	
Gross Earnings per mile . . . . .		\$5,002.81	\$4,555.07	\$447.74	
Operating Expense per mile . . . . .		3,865.92	3,475.88	390.04	
Net Earnings per mile . . . . .		\$1,136.89	\$1,079.19	\$57.70	
Revenue Train Mileage, Fr't . . . . .		3,562,343	3,211,422	350,921	
" " " Pass'r . . . . .		3,217,524	2,950,718	266,806	
Earnings, Freight Train Mile, " " " Pass'r Train Mile . . . . .		\$1.756	\$1.596	0.160	
		0.909	0.794	0.115	

\* In 1900, payments on account of Sinking Funds Equipment Bonds were charged in Operating Expenses to Repairs of Freight Cars. Amount, \$69,333.32.

H.

23

CLASSIFICATION OF FREIGHT TONNAGE

FOR THE YEAR 1901.

COMMODITY.	TONNAGE.	TOTAL TONS.	PERCENT.	TOTAL PERCENT.
Miscellaneous . . . . .		530,133		8.23
Merchandise . . . . .		211,294		3.28
Ice . . . . .		47,758		.74
PRODUCTS OF AGRICULTURE:—		1,226,446		19.04
Grain . . . . .	307,370		4.77	
Flour . . . . .	114,110		1.77	
Other Mill Products . . . . .	94,714		1.47	
Hay . . . . .	260,208		4.04	
Apples and Potatoes . . . . .	284,813		4.42	
Other Fruits, Vegetables and Seeds . . . . .	165,231		2.57	
PRODUCTS OF ANIMALS:—		138,392		2.15
Live Stock . . . . .	57,953		.90	
Dressed Meat (fresh) . . . . .	6,548		.10	
Packing House Product . . . . .	29,676		.46	
Poultry, Game and Fish . . . . .	5,125		.08	
Wool . . . . .	8,218		.13	
Hides and Leather . . . . .	30,872		.48	
MANUFACTURES:—		913,491		14.20
Petroleum and other Oils . . . . .	45,792		.71	
Pig and Bloom Iron . . . . .	73,824		1.15	
Iron and Steel Rails . . . . .	61,255		.95	
Bar and Sheet Metal . . . . .	11,571		.18	
Castings and Machinery . . . . .	66,662		1.04	
Cement, Brick and Lime . . . . .	201,704		3.13	
Agricultural Implements . . . . .	18,397		.29	
Wagons, Carriages, etc. . . . .	22,108		.34	
Wine, Liquors and Beer . . . . .	26,164		.41	
Household Goods, Furniture, Plaster . . . . .	43,527		.68	
Plaster . . . . .	34,517		.54	
Other Manufactures . . . . .	307,970		4.78	
PRODUCTS OF FOREST:—		1,822,559		28.30
Lumber . . . . .	750,364		11.65	
Staves, Heading and Hoops . . . . .	106,063		1.65	
Shingles and Lath . . . . .	112,209		1.74	
Other Forest Products . . . . .	826,605		12.84	
Charcoal . . . . .	27,318		.42	
PRODUCTS OF MINES:—		1,549,174		24.06
Anthracite and Bituminous Coal . . . . .	1,240,224		19.26	
Stone, Gravel and Sand . . . . .	243,037		3.78	
Salt . . . . .	65,913		1.02	
Total . . . . .		6,439,247		100%

## I.

COMPARATIVE DETAILED STATEMENT OF OPERATING EXPENSES  
FOR THE YEARS 1901 AND 1902.

	1901.	1900.	INCREASE.	DECREASE.
<b>GENERAL EXPENSES.</b>				
Salaries of General Officers . . . . .	\$34,018 26	\$38,784 30	• • • • •	\$4,766 04
Salaries of Clerks and Attendants . . . . .	70,453 33	71,394 40	\$5,068 87	• • • • •
General Office Expenses and Supplies . . . . .	10,241 00	9,326 80	1,614 26	• • • • •
Insurance . . . . .	14,228 51	13,258 53	969 98	• • • • •
Law Expenses . . . . .	24,354 83	33,374 69	• • • • •	9,019 86
Stationery and Printing (Gen. Offices) . . . . .	11,283 28	10,839 57	543 69	• • • • •
Other General Expenses . . . . .	6,699 86	6,635 95	73 91	• • • • •
<b>Total . . . . .</b>	<b>\$109,289 13</b>	<b>\$109,904 33</b>	<b>• • • • •</b>	<b>\$615 20</b>
<b>MAINTENANCE OF WAY AND STRUCTURES.</b>				
Repairs of Roadway . . . . .	\$384,718 18	\$770,669 73	\$105,048 45	• • • • •
Renewals of Rails . . . . .	73,755 38	69,334 09	4,421 29	• • • • •
Renewals of Ties . . . . .	337,802 80	253,117 98	84,684 84	• • • • •
Repairs and Renewals of Bridges and Culverts . . . . .	90,926 34	100,475 31	• • • • •	\$9,448 97
Repairs and Renewals of Fences, etc. . . . .	48,468 70	35,590 15	13,372 55	• • • • •
Repairs and Renewals of Buildings and Fixtures . . . . .	119,969 07	90,384 63	29,585 04	• • • • •
Repairs and Renewals of Docks and Wharves . . . . .	7,344 26	7,863 16	• • • • •	518 90
Repairs and Renewals of Telegraph . . . . .	16,121 28	11,607 67	4,613 61	• • • • •
Stationery & Printing (Way & Struct.) . . . . .	3,418 83	1,830 12	1,588 71	• • • • •
Other Way and Structure Expenses . . . . .	4,321 00	10,312 50	• • • • •	5,991 44
<b>Total . . . . .</b>	<b>\$1,580,940 52</b>	<b>\$1,360,227 34</b>	<b>\$226,719 18</b>	<b>• • • • •</b>
<b>MAINTENANCE OF EQUIPMENT.</b>				
Superintendence of Equipment . . . . .	\$21,335 13	\$21,760 34	\$194 79	• • • • •
Repairs and Renewals of Locomotives . . . . .	434,292 05	382,462 91	44,827 14	• • • • •
"    "    "    Passenger Cars . . . . .	180,441 44	160,030 11	411 33	• • • • •
"    "    "    Freight Cars . . . . .	312,188 22	303,336 55	• • • • •	\$7,145 33
"    "    "    Work Cars . . . . .	86,402 33	14,496 04	11,906 29	• • • • •
"    "    "    Shop Machinery and Tools . . . . .	25,664 40	27,340 68	3,114 70	• • • • •
Stationery and Printing (Equipment) . . . . .	3,303 43	3,062 02	240 51	• • • • •
Other Equipment Expenses . . . . .	22,145 85	22,421 76	124 00	• • • • •
<b>Total . . . . .</b>	<b>\$1,038,192 85</b>	<b>\$1,028,127 31</b>	<b>• • • • •</b>	<b>\$9,999 46</b>



I.

COMPARATIVE DETAILED STATEMENT OF OPERATING EXPENSES  
FOR THE YEARS 1901 AND 1900.— *Continued.*

	1901.	1900.	INCREASE.	DECREASE.
<b>CONDUCTING TRANSPORTATION.</b>				
Superintendence (Transportation) . . .	\$99,732 02	\$90,895 23	\$8,836 79	
Engine and Roundhouse Men . . .	602,025 15	511,414 79	90,610 36	
Fuel for Locomotives . . .	652,725 68	555,659 22	97,066 46	
Water Supply for Locomotives . . .	318,073 50	31,417 42	7,556 06	
Oil, Tallow and Waste for Locomotives, . .	30,502 29	20,675 47	9,826 82	
Other Supplies for Locomotives . . .	15,985 70	9,095 56	6,890 14	
Train Service . . .	466,533 92	387,481 21	79,052 71	
Train Supplies and Expenses . . .	105,794 08	74,954 63	30,839 45	
Switchmen, Flagmen and Watchmen . . .	241,401 42	204,636 89	36,764 53	
Telegraph Expenses . . .	91,664 52	79,374 50	12,290 02	
Station Service . . .	553,239 40	508,641 99	44,597 41	
Station Supplies . . .	14,279 03	32,121 53	2,157 50	
Switching Charges . . .	80,163 65	44,765 01	35,398 64	
Car Mileage . . .	90,892 88	92,631 41		\$1,738 53
Hire of Equipment . . .	16,254 09	14,563 27	1,690 82	
Loss and Damage . . .	50,152 18	23,646 87	26,505 31	
Injuries to Persons . . .	51,983 94	23,752 83	28,231 11	
Clearing Wrecks . . .	13,875 72	5,147 81	8,727 91	
Advertising . . .	36,340 18	27,989 18	8,351 00	
Outside Agencies . . .	84,085 57	75,172 39	8,913 18	
Commissions . . .				
Stock Yards and Elevators . . .				
Rents for Tracks, Yards and Terminals, . .	173,917 70	207,075 14		33,157 44
Rents of Buildings and other Property . .	(less) 6,050 84	517 53		6,568 37
Stationery and Printing (Transportation). .	52,032 96	60,603 03		8,570 07
Other Transportation Expenses . . .	4,763 77	2,031 01	2,732 76	
Total . . .	\$3,581,268 51	\$3,084,263 92	\$497,004 59	
Total Rail Expenses . . .	\$6,405,852 01	\$5,695,522 90	\$710,329 11	
<b>LAKE TRANSPORTATION.</b>				
Operating Marine Equipment . . .	422,187 59	373,178 13	49,009 46	
Grand Total Rail and Lake . . .	\$6,828,039 60	\$6,068,701 03	\$759,338 57	

## PERE MARQUETTE RAILROAD COMPANY.

J.

## GROSS EARNINGS, OPERATING EXPENSES AND NET EARNINGS, BY MONTH.

Earnings.	January.	February.	March.	April.	May.	June.
Freight. . . . .	\$464,668.68	396,785.82	455,649.30	542,232.10	507,446.53	453,496.47
Passenger . . . . .	136,276.76	136,926.45	164,667.18	178,701.16	178,280.38	203,796.45
Express . . . . .	8,606.32	8,650.00	16,160.82	8,650.00	8,650.00	8,650.00
Mail . . . . .	17,962.89	17,962.89	18,412.55	17,962.89	17,962.89	18,401.30
Telegraph . . . . .	625.83	430.37	566.32	553.79	560.50	495.76
Miscellaneous . . . . .	1,212.35	1,082.61	1,275.59	769.71	777.88	849.61
Marine . . . . .	34,043.23	33,504.41	38,483.75	49,131.14	45,333.94	46,978.90
Total . . . . .	\$683,396.06	595,342.55	695,215.52	798,030.79	759,012.12	732,670.61

## OPERATING EXPENSES.

General Expenses . . . .	\$16,389.71	16,147.09	18,100.70	18,262.50	15,586.02	19,590.79
Maintenance of Way & Structures . . . . .	89,830.01	82,779.54	98,419.62	128,186.62	138,557.95	150,683.35
Maintenance of Equipm't, . . . . .	95,725.81	80,694.64	89,248.36	79,867.94	80,740.53	66,860.55
Conducting Transportat'n, . . . . .	289,073.31	273,922.83	291,073.94	275,917.36	279,050.84	269,692.73
Marine . . . . .	32,994.22	27,570.74	35,043.32	33,526.80	34,979.02	30,421.81
Total . . . . .	\$524,013.06	481,114.84	531,885.94	535,761.22	548,914.36	537,149.30
Taxes . . . . .	21,905.98	17,516.50	20,251.55	25,639.04	22,397.35	20,109.50
Total Oper. Exp. & Taxes, . . . . .	\$545,919.04	498,631.34	552,137.49	561,400.26	571,311.71	557,258.80
Net Earnings . . . . .	\$137,477.02	96,711.21	143,078.03	236,630.53	187,700.41	175,311.81

# PERE MARQUETTE RAILROAD COMPANY.

27

J.

FOR THE YEAR ENDING DECEMBER 31, 1901.

July.	August.	September.	October.	November.	December.	Total.	Per cent. of Earnings.
417,663.65	489,175.93	490,946.21	559,057.26	500,664.48	475,746.93	5,753,533.36	62.53
279,077.27	321,747.35	253,496.98	214,541.58	189,985.46	216,636.47	2,494,135.69	27.11
8,650.00	8,650.00	8,650.00	8,650.00	26,679.72	8,650.00	139,296.86	1.41
17,967.05	17,982.61	18,440.69	17,958.49	18,211.94	18,379.76	217,605.85	2.36
553.35	613.01	786.03	795.99	725.54	553.89	7,290.39	.08
1,045.42	913.81	701.32	774.50	937.68	1,005.44	11,345.94	.12
51,358.22	65,152.16	61,712.47	55,253.22	53,862.28	53,153.39	587,967.11	6.39
776,314.96	904,234.87	834,733.70	857,031.04	791,067.10	774,125.88	9,201,175.20	100.00

16,790.42	13,693.68	16,865.25	14,627.21	16,176.80	17,158.96	199,389.13	2.17
131,557.37	169,257.61	151,886.74	167,690.80	159,250.08	118,896.83	1,586,996.52	17.25
84,974.49	94,990.42	84,068.44	83,733.49	93,509.78	103,783.40	1,038,197.85	11.28
296,569.64	313,415.65	293,077.75	335,590.08	334,489.59	329,394.79	3,581,268.51	38.92
34,314.97	35,310.02	40,607.60	35,045.28	39,063.07	43,310.67	422,187.59	4.59
564,206.89	626,667.38	586,505.78	636,686.86	642,489.32	612,544.65	6,828,039.60	74.21
26,280.12	27,628.70	24,382.08	25,453.80	18,942.92	31,664.88	282,172.42	3.06
590,487.01	654,296.08	610,887.86	662,140.66	661,432.24	644,209.53	7,110,212.02	77.27
185,827.95	249,938.79	223,845.84	194,890.38	129,634.86	129,916.35	2,090,963.18	22.73

1100

**K.****FREIGHT STATISTICS.**

	1901.	1900.
Freight earnings . . . . .	\$5,753,533.36	\$5,126,550.79
Miles run, freight trains . . . . .	3,562,343	3,211,422
Miles run by loaded freight cars . . . . .	53,970,279	46,303,850
Miles run by empty freight cars . . . . .	18,603,564	16,153,339
Number of tons of revenue freight carried . . . . .	6,439,247	5,675,599
Number of tons of revenue freight carried one mile . . . . .	791,039,936	639,329,323
Number of tons of revenue freight per train mile . . . . .	222.06	207.00
Number of tons of revenue freight per loaded car . . . . .	14.66	13.87
Number of tons of revenue freight per mile of road . . . . .	3.501	3.116
Average number loaded freight cars per train, . . . . .	15.15	14.99
Average number empty freight cars per train, . . . . .	5.22	5.23
Average number loaded and empty freight cars per train . . . . .	20.37	20.22
Average miles each ton of revenue freight was carried . . . . .	122.84	112.64
Average amount received per ton of revenue freight . . . . .	\$0.8935	\$0.9033
Average revenue from freight per train mile, . . . . .	\$1.615	\$1.59
Average revenue per ton of revenue freight per mile . . . . .	\$0.00727	\$0.00802
Average revenue from freight per mile of road, . . . . .	\$3,128.28	\$2,814.79

**PASSENGER STATISTICS.**

Passenger earnings . . . . .	\$2,494,135.69	\$2,347,104.81
Miles run, passenger trains . . . . .	3,217,524	2,956,718
Number of passengers carried . . . . .	3,382,443	2,853,495
Number of passengers carried one mile . . . . .	123,739,849	105,760,378
Average miles each passenger was carried . . . . .	36.58 miles	37.06 miles
Average revenue received from each passenger . . . . .	\$0.7373	\$0.8225
Average revenue from passengers per train mile . . . . .	\$0.7751	\$0.7937
Average revenue per passenger per mile . . . . .	\$0.0201	\$0.0218
Average revenue from passengers per mile of road . . . . .	\$1,356.09	\$1,288.70

NOTE. — Tonnage of Company freight carried free not included in the above.

K.

MARINE STATISTICS.

	1901.	1900.
<b>Freight:</b>		
Earnings from freight . . . . .	\$503,839.94	\$413,638.08
Number tons revenue freight carried . . . . .	1,022,419	897,728
Average amount received from each ton, . . . . .	\$0.49279	\$0.51224
<b>Passenger:</b>		
Earnings from passengers . . . . .	\$79,800.93	\$66,993.49
Number of passengers carried . . . . .	39,642	30,316
Average amount received from each passenger . . . . .	\$2.01	\$2.21
<b>Express:</b>		
Earnings from express . . . . .	\$1,206.24	\$1,200.00
<b>Mail:</b>		
Earnings from mail . . . . .	\$3,120.00	\$3,165.00

MISCELLANEOUS STATISTICS.

Total miles run by revenue trains . . . . .	6,779,867	6,168,140
Maintenance of equipment per revenue train mile . . . . .	\$0.1531	\$0.1699
Station service per revenue train mile . . . . .	\$0.0816	\$0.0825
Train service per revenue train mile . . . . .	\$0.0688	\$0.0628
Engine and roundhouse men per revenue train mile . . . . .	\$0.0888	\$0.0829
Train and station supplies per revenue train mile . . . . .	\$0.0207	\$0.0174
Fuel for locomotives per revenue train mile . . . . .	\$0.0963	\$0.0901
Oil, tallow and waste for locomotives per revenue train mile . . . . .	\$0.0045	\$0.0033
All other expenses per revenue train mile, including taxes . . . . .	\$0.5349	\$0.5174
Total operating expenses per revenue train mile, including taxes . . . . .	\$1.0487	\$1.0263
Total operating expenses per revenue train mile, excluding taxes . . . . .	\$1.0071	\$0.9839
Percentage of expenses to earnings, including taxes . . . . .	77.27	76.31
Percentage of expenses to earnings, excluding taxes . . . . .	74.21	73.15

## PERE MARQUETTE RAILROAD COMPANY.

## L.

## MILEAGE.

December 31, 1901.

## Divisions, including Branches thereon:

			Main Line.	Business Producing Branches.	Sidings.
Toledo	Division, between Alexis and Saginaw		172.53	1.71	117.09
• Bay City	" " Saginaw and Bay City		25.66		18.39
Ludington	" " Saginaw and Ludington		190.49	17.55	67.54
Manistee	" " Merritt and Manistee		27.06	4.40	7.15
Port Huron	" " Saginaw and Port Huron		124.39		22.57
Port Austin	" " Port Huron and Grindstone City,		110.63		15.67
Petoskey	" " Grand Rapids and Bay View		248.13	17.49	64.62
Big Rapids	" " Berry and Big Rapids		52.04		5.04
Muskegon	" " Allegan and Pentwater		127.70	3.43	45.70
Detroit	" " Plymouth and Oak		29.26		9.65
Grand Rapids	" " Plymouth and Grand Rapids		132.94	4.24	42.70
Saginaw	" " Elmdale and Paines		102.58		23.16
Ionia	" " Grand Ledge and Big Rapids		165.78	2.58	30.06
La Crosse	" " La Crosse and New Buffalo		37.61		6.48
Chicago	" " New Buffalo and Grand Rapids,		114.94		51.19
Total mileage owned by this Company			1,661.74	51.40	527.11

## Leased Lines:

Saginaw, Tuscola & Huron R. R.	between Saginaw and Bad Axe	65.79		19.43
Gr. Rap., Kalkaska & S. E. R. R.	" Rapid City and Stratford	32.90	6.62	6.84
Michigan Cen. R. R.,	" Lansing and North Lansing	1.04		
	" Mershon and Paines	6.70		
Ann Arbor R. R.	" Toledo and Alexis	6.63		
D. U. R. R., D., & S. Co.	" Delray and 18th St., Detroit	3.34		3.44
Fort Street Union Depot Co.	" 18th St. and Third St., Detroit	1.36		
12th St Yds., Detroit,				
Detroit & Mackinac R. R. Bridge, Bay City, P. M. owns one half,		0.26		5.51
Business producing branches		58.02		
Total miles operated			1,837.68	58.02
				562.33

\* Includes 6.25 miles leased.

## PERE MARQUETTE RAILROAD COMPANY.

31

**M.****EQUIPMENT.**

DECEMBER 31, 1901.

## LOCOMOTIVES:—

8 wheel . . . . .	116	
10 wheel . . . . .	22	
Moguls . . . . .	42	
Consolidated . . . . .	21	
Chautauqua . . . . .	5	
Switch . . . . .	39	
Narrow Gauge . . . . .	4	
Special . . . . .	1	250
		<hr/>

## FREIGHT CARS:—

Refrigerator . . . . .	111	
Box . . . . .	4,683	
Furniture . . . . .	390	
Stock . . . . .	91	
Charcoal . . . . .	105	
Flat . . . . .	2,606	
Coal . . . . .	916	
Miscellaneous . . . . .	132	
Cabin Cars . . . . .	113	9,147
		<hr/>

245

8.90

## PASSENGER CARS:—

Official Cars . . . . .	4	
Sleepers . . . . .	2	
Parlor . . . . .	15	
First-Class Coaches . . . . .	88	
Smokers . . . . .	59	
Baggage and Smoker . . . . .	29	
Baggage, Mail and Smoker . . . . .	4	
Mail . . . . .	2	
Baggage, Mail and Express . . . . .	28	
Baggage . . . . .	24	
Baggage and Express . . . . .	5	
Buffet Parlor . . . . .	1	
Parlor Observation . . . . .	2	
Café Coach . . . . .	2	265
		<hr/>

## NARROW GAUGE CAR EQUIPMENT:—

Box . . . . .	78	
Refrigerator . . . . .	3	
Stock . . . . .	14	
Coal . . . . .	8	
Flat (leased) . . . . .	12	
Flats . . . . .	15	
Snow Plow . . . . .	1	
Caboose . . . . .	1	
Tool Car . . . . .	1	133
		<hr/>
Passenger Coaches . . . . .	5	
Baggage, Mail and Smoker . . . . .	1	
Baggage, Mail and Express . . . . .	1	7
		<hr/>

1104



## PERE MARQUETTE RAILROAD COMPANY.

BOSTON, December 31, 1901.

WILLIAM W. CRAPO, } TRUSTEES UNDER MARQUETTE EQUIPMENT CO.  
 OLIVER W. MINK, } LIMITED, MORTGAGE, DATED AUGUST 24, 1900.  
 CHARLES MERRIAM, }

*In account with*

## PERE MARQUETTE RAILROAD COMPANY.

Received from Pere Marquette Railroad Co., from September, 1900, to December, 1901, both inclusive, on account of payments to the Sinking Fund as provided for in the Mortgage . . . .	\$120,233.32
Received interest on deposits to December 31, 1901 . . . .	726.16
Total . . . . .	<u>\$120,959.48</u>
Less paid for 74 Marquette Equipment Co., Limited, 1st Mortgage 5% bonds, \$1,000 each, with coupons, of and from April 1, 1902, attached, at par, flat, for Sinking Fund . . . . .	74,000.00
Balance cash on hand December 31, 1901 . . . .	<u><u>\$46,959.48</u></u>

1105

## PERE MARQUETTE RAILROAD COMPANY.

33

## LAND DEPARTMENT.

DETROIT, MICH., January 1, 1902.

TO CHARLES MERRIAM, *Treasurer*.

Herewith I submit statement of the business of the Land Department during the year 1901:—

There has been sold by the Land Commissioner 2,842<sup>81</sup>/<sub>100</sub> acres at an average price of \$5.81 per acre, amounting to . . . \$16,506 62

The receipts during 1901 from land sales and land contracts were as follows:—

Principal . . . . .	\$50,725 87
Interest on Contracts . . . . .	6,190 39
	<u>\$56,916 26</u>
Interest received on Deposits . . . . .	573 24
	<u><u>\$57,489 50</u></u>

Payments have been made for Taxes and

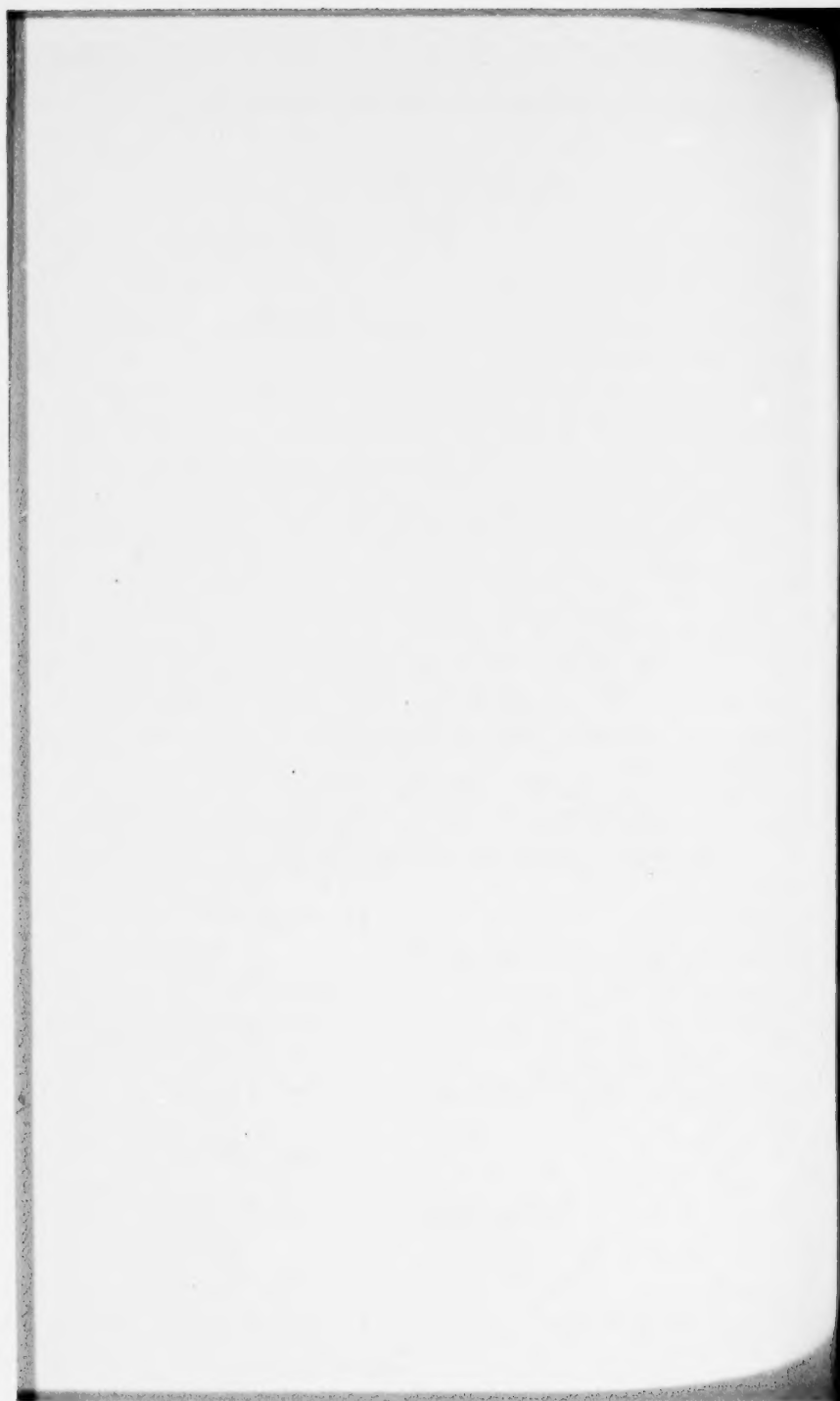
Sundry Expenses . . . . .	\$5,595 01
Expenses of Land Commissioner's Office . . . . .	1,000 00
Trustee and Clerical Services . . . . .	375 00
	<u>\$6,970 01</u>
Balance paid to Charles Merriam, Treasurer . . . . .	50,519 49
	<u><u>\$57,489 50</u></u>

Bills Receivable on hand December 31, 1901:—

Principal . . . . .	\$38,488 65
Interest . . . . .	6,065 08
	<u><u>\$44,553 73</u></u>

There remain unsold at this date 33,872<sup>95</sup>/<sub>100</sub> acres.

WM. W. CRAPO,  
*Trustee.*



*Ex 3 June 8. 1904*

769

# THIRD ANNUAL REPORT

OF THE

## PERE MARQUETTE RAILROAD COMPANY,

FOR THE FISCAL YEAR ENDING

DECEMBER 31, 1902.

---

T. W. RIPLEY CO., THE SOUTHGATE PRESS.  
BOSTON, U. S. A.

1903.  
**1108.**



# PERE MARQUETTE RAILROAD COMPANY.

## DIRECTORS.

FREDERICK H. PRINCE	BOSTON.
THOMAS F. RYAN	NEW YORK.
WILLIAM K. BIXBY	ST. LOUIS.
THOMAS H. WEST	ST. LOUIS.
SAMUEL R. SHIPLEY	PHILADELPHIA.
MYRON J. CARPENTER	DETROIT.
NATHANIEL THAYER	BOSTON.
MARK T. COX	NEW YORK.
CHARLES MERRIAM	BOSTON.
WALTER HUNNEWELL	BOSTON.
NEWMAN ERB	NEW YORK.

## EXECUTIVE COMMITTEE.

NEWMAN ERB,	NATHANIEL THAYER,
MARK T. COX,	THOMAS F. RYAN,
FREDERICK H. PRINCE.	

## OFFICERS.

FREDERICK H. PRINCE	PRESIDENT.
MARK T. COX	VICE-PRESIDENT.
NEWMAN ERB	VICE-PRESIDENT.
MYRON J. CARPENTER	VICE-PRESIDENT AND GENERAL MANAGER.
CHARLES MERRIAM	SECRETARY AND TREASURER.
ARTHUR M. SMITH	GENERAL SUPERINTENDENT.
FREDERICK W. STEVENS	GENERAL COUNSEL.
STOREY, THORNDIKE, {	GENERAL SOLICITORS.
PALMER & THAYER }	
ARTHUR PATRIARCHE	GENERAL TRAFFIC MANAGER.
JAMES E. HOWARD	AUDITOR.

## GENERAL OFFICES.

65 BROADWAY, NEW YORK, N. Y.  
FORT STREET UNION DEPOT, DETROIT, MICH.

## STOCK TRANSFER OFFICES.

30 STATE STREET, BOSTON, MASS.      40 WALL STREET, NEW YORK, N. Y.

## ANNUAL MEETING.

First Wednesday in May, at Detroit, Mich.





## THIRD ANNUAL REPORT.

Boston, April 17, 1903.

*To the Stockholders of the*

*Pere Marquette Railroad Company:—*

In presenting the statement of the operations of the Company for the year 1902, I take occasion to point out that the

Net earnings from operations were . . . \$993,136.79

An increase over the preceding year of . . . 258,562.35

notwithstanding an increase in taxes of \$107,492.91, and a charge against operating expenses for cost of actual betterments and certain equipment, amounting to \$114,641.08, covering items which are properly chargeable to property account.

The new work begun in 1901, now almost completed, was intended to so improve the physical condition of your property that the cost of operation might be considerably reduced. This expectation is now being realized, and will be further reflected in the results of operation in 1903.

While the taxes for the year were larger, and the cost of fuel during the months of November and December very materially increased, and wages in certain departments raised, there was an increase of only \$292,828.79 in operating expenses against an increase of \$754,199.87 in gross revenue.

The addition of fifty-two modern heavy engines to the Company's equipment during the past two years has resulted in a substantial increase of the train tonnage and a corresponding reduction in the cost per train mile, fully justifying the expectation that further economies will result when the additional motive power, already ordered, shall have been received.

The rapid development and the industrial progress in the territory served by your Company is almost phenomenal. These appear to be of a character giving indication of permanency and substantiality.

The Company has been unable to meet the demands of patrons for cars, the local shortage being at times more than six thousand cars in a single day. While it is true that a car shortage was and is more or less general, this condition on your road was more acute and the requirements greater in proportion to the total of the actual equipment owned.

In December, the Company entered into a contract for the purchase of the Lake Erie and Detroit River Railway Company

for \$2,870,000, issuing in payment therefor its Collateral Trust Twenty-Year Bonds, bearing interest at the rate of 3 per cent. for the first three years, and 4 per cent. thereafter. The road extends from Port Huron and Windsor to St. Thomas, with branches to Port Stanley and Rond Eau, on Lake Erie, and to London, all in the Province of Ontario, and having a total of 230 miles. From St. Thomas to Buffalo, the traffic of the Company will be carried under an agreement with one of the existing lines. The net earnings from the local business of the road are more than sufficient to pay the interest on the above bonds, and the acquisition being self-sustaining involves no burden upon your property.

The purchase was taken over January 1, 1903. The object of acquiring the properties is to increase the length of haul on business which the Pere Marquette creates and controls. Your Company is a large originator of freight, which in the past it has been turning over to its connections, obtaining therefrom only the short haul. The result has been a profit on its freight business inconsistent with its position. By carrying this business over our own lines, lengthening the haul, the earnings will thereby be largely increased, and at the same time our property will be strengthened.

A contract has been entered into, to be effective in April, 1903, with the Bessemer and Lake Erie Railroad Company, owned by United States Steel Corporation, for the joint purchase of the docks and car ferry of the United States and Ontario Steam Navigation Company and with a contract for the interchange of traffic across the lakes, between the railroad company named and your company, for a period of ninety-nine years. To the property thus jointly acquired will be added a new steam collier, and the tonnage interchange already contracted for should give a large and profitable revenue to your Company.

The business across Lake Michigan gives every evidence of continued steady development and appears to be limited only by our marine capacity for handling it.

The opening of the through lines created, as well as the increasing local requirements, necessitates a larger addition to the Company's equipment and marine, for which provision has been in part already made.

F. H. PRINCE,

*President.*

# THIRD ANNUAL REPORT.



DETROIT, MICH., March 31, 1903.

To the Board of Directors of the  
*Pere Marquette Railroad Company*:—

Herewith is presented the statement of the operations of the Company for the year ending December 31, 1903.

## MILEAGE.

The mileage of railroads owned and operated is as follows:—

Miles of road owned . . . . .	1,742.81	Increase, 87.32
" " " leased . . . . .	32.90	Decrease, 72.04
	<u>1,775.71</u>	Increase, 15.28
Trackage rights over lines owned by other Companies . . . . .	18.97	
Owned jointly with other Companies . . . . .	.26	
Total mileage operated . . . . .	<u>1,794.94</u>	Increase, 15.28

The increase in mileage owned is on account of the construction of Allegan Extension, 1.84 miles, certain changes at Ludington and Plymouth, and changes caused by re-classification.

## EARNINGS AND EXPENSES.

Gross . . . . .	\$9,955,375.07
Operating Expenses including Taxes . . . . .	<u>7,510,533.72</u>
Net . . . . .	\$2,444,841.35
Interest on Bonds . . . . .	<u>1,451,704.56</u>
Surplus . . . . .	<u>\$993,136.79</u>

**COMPARATIVE STATEMENT, EARNINGS AND EXPENSES,  
YEARS 1902 AND 1901.**

	1902.	1901.	INCREASE.
Gross Earnings . . . . .	\$9,955,375 07	\$9,201,175 20	\$754,199 87
Operating Expenses . . . . .	7,120,868 39	6,828,039 60	292,828 79
Net Earnings . . . . .	\$2,834,506 68	\$2,373,135 60	\$461,371 08
Taxes . . . . .	389,665 33	282,172 42	107,492 91
Net Earnings . . . . .	\$2,444,841 35	\$2,090,963 18	\$353,878 17
Interest Charges . . . . .	1,451,704 56	1,356,388 74	95,315 82
	\$993,136 79	\$734,574 44	\$258,562 35

Percentage of Expenses to Earnings (exclusive of Taxes) . . . . .	1902. 71.53	1901. 74.21	Decrease. 2.68
Percentage of Expenses to Earnings (including Taxes) . . . . .	75.44	77.27	1.83

**EARNINGS AND EXPENSES.**

The gross earnings for the year 1902 aggregate \$9,955,375.07, an increase of \$754,199.87 over the year 1901, equal to 8.19%, and the expenses, exclusive of taxes, increased \$292,828.79, or 4.29%, showing an increase in net earnings from operations of \$461,371.08, or 19.44%.

**EXPENSES.**

**MAINTENANCE OF WAY AND STRUCTURES.**

The amount expended for maintenance of way and structures was \$1,480,422.42, a decrease of \$106,574.10 or 6.72% from 1901.

A summary of the work done is shown herewith :

# PERE MARQUETTE RAILROAD COMPANY.

9

## NEW RAIL.

	Miles Track.
New rail on hand January 1, 1902 . . . . .	28.358
Received during the year 1902 . . . . .	27.568
Total . . . . .	55.926

Disposed of as follows:—

	Miles Track.
Laid on Detroit and Grand Rapids Division . . . . .	11.286
“ “ Toledo Division . . . . .	17.532
“ “ Ludington “ . . . . .	21.378
“ “ Saginaw “ . . . . .	.408
“ “ Petosky “ . . . . .	.379
“ “ Bay City “ . . . . .	.779
On hand December 31, 1902 . . . . .	4.164
Total . . . . .	55.926

## RELAYING RAIL.

	Miles Track.
Relaying rail on hand January 1, 1902 . . . . .	38.300
Released by laying of new 75-lb. steel . . . . .	51.760
Side tracks taken up . . . . .	23.500
Total . . . . .	113.560

Disposed of as follows:—

Laid in new sidings . . . . .	52.110	
“ “ main track . . . . .	2.270	54.380
Sold to Sanilac Center R. R. . . . .		6.890
Scrapped and sold . . . . .		15.350
On hand Dec. 31, 1902: Relay rail, . . . . .	33.380	
Scrap . . . . .	3.560	36.940
Total . . . . .		113.560

## TRACKS.

176.36 miles of tracks were improved by reballasting; 2.27 miles relaying rail were used in additions to the main track, including the Allegan Extension, and minor changes on Ludington and

**1116**

Detroit Divisions; 52.11 miles of new sidings and business producing tracks were laid with relaying rail and 23.50 miles of sidings and business producing tracks were taken up, making a net increase of 28.66 miles of these tracks. 722,847 new cross-ties were put in the tracks.

The grade changes at Plymouth, Northville-*Novi*, Grand Blanc, and *Ewart-Sears*, under way at close of last year, were completed, and the changes in grade at *Flint*, *Horton* and *Canton* were opened and completed during this year. The *Allegan Extension* was also completed and put in service during the year.

New interlocking devices were erected at *Grand Junction*, *Hoyt*, *Vassar*, and *Otter Lake*, and heavy repairs put on interlockers at *Delray*, *Washington Avenue*, *Saginaw* and *Grand Rapids*.

### BUILDINGS.

New water tanks were constructed at *Manistee*, *Saginaw*, *New Richmond* and *Sharon*, and substructures for tank at *Ionia*, and a new coaling station at *Grand Ledge*. New engine house was constructed at *Manistee*, in place of one destroyed by fire, and the engine houses at *Bay City* and *Plymouth*, and the roundhouse at *Saginaw*, commenced in 1901, were completed.

Passenger and freight stations were erected at *Blaine*, *Allegan*, *Mears* and *Breckenridge*, and the new passenger station at *Bay City* was commenced and is now in process of completion.

### BRIDGES.

New bridges were built during the year, as follows: One on the *Bay City Division* north of *Crow Island*, and four on the *Allegan Extension*.

The following bridges have been rebuilt as permanent structures: *Riverside*, *Milford*, *Newaygo*, *Ewart*, *Salem*, *Eagle*, *Wadsworth Street*, culvert at *Saginaw*. A plate girder draw span at *Benton Harbor* was substituted for a pile trestle bridge. Thirty-four new culverts were constructed using cast-iron pipe, and sixteen using vitrified pipe.

### **MAINTENANCE OF EQUIPMENT.**

The cost of maintenance of equipment amounted to \$1,040,473.87, an increase of \$2,276.02 as compared with the year 1901.

### **LOCOMOTIVES.**

Nineteen new locomotives were purchased during the year. One switch engine was sold and two light eight-wheel engines scrapped, making a net increase to the locomotive equipment of sixteen engines, showing a total of 266 engines December 31, 1902, as against 250 December 31, 1901.

### **PASSENGER CARS.**

There were thirteen new passenger cars purchased during the year, including one officers' car, two parlor observation cars, two café coaches, six first-class coaches, two combination cars and one combination car built at the Company's shops, making a total addition of fourteen. One combination car was changed to a caboose car, which made a net increase to passenger car equipment of thirteen cars, showing 285 cars on December 31, as against 272 at the close of the previous year.

### **FREIGHT EQUIPMENT.**

There were 731 freight cars and 27 caboose cars added to the freight equipment during the year.

### **CONDUCTING TRANSPORTATION.**

The cost of conducting transportation was \$3,906,673.40, an increase over 1901 of \$325,404.89 or 9.09%. This increase is caused by increased cost of material and labor and the increase in tonnage. The increase in cost of fuel for locomotives alone was \$145,615.36 or 22.31%. The increase in freight train mileage was 216,965 miles or 6.09%, and the revenue tons per mile was increased 115,023,848 tons or 14.54%. The increase in passengers carried one mile is 6,309,535 or 5.1%, and the increase in passenger train miles is 84,548 or 2.63%.



**MARINE EQUIPMENT.**

The marine equipment consists of three steel car ferries Nos. 15, 17 and 18, of thirty cars capacity each, one wooden car ferry No. 16, of twenty-six cars capacity and four combination break bulk and passenger boats, Nos. 2, 3, 4 and 5.

On January 17, 1902, break bulk boat No. 3 struck a sand bar near Ludington, disabling her for about four months.

The cost of repairs was covered by insurance.

The following items, showing a total of expenses of \$114,614.08 on account of betterments, were charged to operating expenses:—

New sidings . . . . .	\$63,819.04
Steam shovel . . . . .	4,875.00
Iron pipe for renewal of timber culverts, . . . . .	5,350.35
Evart depot buildings . . . . .	2,383.27
Removal of East Paris station . . . . .	1,150.00
New telegraph line, New Buffalo—	
Grand Rapids . . . . .	2,506.97
Rogers ballast cars . . . . .	15,120.00
Stickley Bros. cars . . . . .	2,160.00
Applying wide vestibules to 8 passenger cars . . . . .	10,609.78
P. M. Transportation Co. Bonds.—	
Steamer No. 15 . . . . .	6,666.67
Total . . . . .	<u>\$114,641.08</u>

**CONSTRUCTION AND EQUIPMENT ACCOUNT.**

The sum of \$2,238,622.27 was added to this account for the year, full detail of which appears in table E of this report.

**GENERAL IMPROVEMENT ACCOUNT.**

There was charged to this account during the year the sum of \$141,480.62, including the cost of three new switch engines. For details of this account see table F of this report.

**INVESTMENT ACCOUNT.**

There is an addition to this account of \$17,202.27, on account of the purchase of golf grounds at Ottawa Beach and improvements to the hotel at that point.

**BONDED DEBT.**

The bonded debt was increased by the sale of the 4% consolidated gold bonds of this Company amounting to \$2,105,000, the proceeds being used to purchase new equipment and to pay for the various other items which go to make up the additions to construction and equipment in 1902.

The bonded debt was reduced by payment of the balance of the bonds of the Michigan Equipment Company, which were not provided for by the sinking fund, amounting to \$143,000. These bonds matured June 1, 1902, and were paid at that date.

For further information in regard to the financial affairs of the Company, you are respectfully referred to the Auditor's statements accompanying this report.

M. J. CARPENTER,

*Vice-President and General Manager.*

**1120**

780

## AUDITOR'S REPORT.

Mr. M. J. CARPENTER,  
*Vice-President and General Manager,*  
 Detroit, Mich.

Dear Sir, — I herewith submit the accounts and statements of  
 the Pere Marquette Railroad Company for the year ending December  
 31, 1902: —

- A. Condensed General Balance Sheet.
- B. Income Account.
- C. Profit and Loss Account.
- D. Bonded Debt.
- E. Construction Account.
- F. General Improvement Fund.
- G. Additions to Investment Account.
- H. Comparative Statement, Earnings and Expenses.
- I. Classification of Freight Tonnage.
- J. Comparative Statement of Operating Expenses.
- K. Gross Earnings, Operating Expenses and Net Earnings  
 by Months.
- L. Freight, Passenger, Marine and Miscellaneous Statistics.
- M. Mileage Statement.
- N. Equipment.
- O. Report of Trustees, Marquette Equipment Company.
- P. Report of Land Grant Trustee.

J. E. HOWARD,

*Auditor.*

**A.**  
**CONDENSED GENERAL BALANCE SHEET, DECEMBER 31, 1902.**

PROPERTY ACCOUNTS.		CAPITAL ACCOUNTS.	
Cost of Road, Construction and Equip't	\$57,061,567 67	Common Stock	\$16,000,000 00
Equipment: Equipment Companies	890,000 00	Preferred Stock	12,000,000 00
Investments	1,421,027 43	Funded Debt	31,173,337 43
AVAILABLE ASSETS.		CURRENT LIABILITIES.	
Cash and Bills Receivable	780,470 82	Accrued Bond Interest	364,555 16
Material on hand	550,023 85	Unpaid Coupons	51,512 45
Open Accounts	755,113 93	Unpaid Vouchers and Pay Rolls	1,028,231 64
Trustees, Equipment Companies	44,659 48	Unpaid Taxes	355,703 53
D., G. R. & W. R. R. Preferred Stock Scrip	271 60	Unpaid Dividends (inc. Feb. 16, 1903)	213,158 00
	\$61,503,134 78	Sinking Funds, Equipment Bonds	44,659 48
		Bills Payable	58,500 00
		Income Account	213,477 09
			\$61,503,134 78

**B.**  
**INCOME ACCOUNT FOR THE FISCAL YEAR ENDING DECEMBER 31, 1902.**

Operating Expenses	\$7,120,868 39	Gross Earnings	\$9,955,375 07
Interest Charges	1,451,704 56		
Taxes	389,665 33		
	\$8,962,238 28		
Balance, being net income for year ending			
December 31, 1902, carried to Profit and			
Loss Account	993,136 79		
	\$9,955,375 07		

C.

PROFIT AND LOSS ACCOUNT.

Dividend No. 4, August 15, 1902 . . .	\$210,206 00	Balance brought forward . . .	\$993,136 79
Dividend No. 5, February 16, 1903 . . .	210,210 00		
Payments on account of Equipment Notes .	159,243 70		
Transferred to Improvement Fund . . .	200,000 00		
Carried to General Balance Sheet . . .	213,477 09		
	<u>\$993,136 79</u>		<u>\$993,136 79</u>

**D.**  
BONDED DEBT, DECEMBER 31, 1941.

Date	When Due	Description	Amount	Rate	Annual Interest
Jan'y 1, 1901	Jan'y 1, 1901	Pere Marquette Railroad Co. Consolidated Mortgage Gold Bonds Authorized issue \$1,000,000. First mortgage upon all the age and property of the Pere Marquette R. R. Co. subject to the following bonds issued by the Constituent Companies.	\$1,000,000 00	4%	\$40,000 00
Oct. 1, 1900	Oct. 1, 1900	Flint & Pere Marquette Railroad Co. Authorized issue, \$1,000,000. First mortgage upon 77.90 miles, Monroe to Ludington, Flint River Branch and Saginaw & Bay City Branch.	4,000,000 00	6%	240,000 00
Oct. 1, 1900	Oct. 1, 1900	Flint & Pere Marquette Railroad Co. (Redeemed). Same as next above described, except that interest is reduced to 4%.	1,000,000 00	4%	40,000 00
May 1, 1900	May 1, 1900	Flint & Pere Marquette Railroad Co. (Consolidated). Authorized issue, \$1,500,000. First mortgage on 116.70 miles of track, and second mortgage upon 116.70 miles covered by P. & M. First Mortgage notes above.	2,500,000 00	5%	125,000 00
April 1, 1900	April 1, 1900	Flint & Pere Marquette Railroad Co. (P. & M. Div.). Authorized issue, \$1,500,000. First mortgage on Port Huron Division, 235.02 miles.	3,500,000 00	5%	175,000 00
July 1, 1900	July 1, 1900	Flint & Pere Marquette Railroad Co. (Toledo Div.). Authorized issue, \$1,000,000. First mortgage on Toledo Division, 14.20 miles; also cover lease for trackage and terminals with Ann Arbor R. R. at Toledo, Ohio.	400,000 00	5%	20,000 00
Oct. 1, 1897	Issued annually.	Pere Marquette Transportation Co. Original issue, \$100,000. First mortgage on Car Ferry No. 15.	100,000 00	6%	6,000 00
Dec. 1, 1891	Dec. 1, 1901	Chicago & West Michigan Ry. Co. Authorized issue, \$1,500,000. First mortgage on the mileage formerly owned by the C. & W. M. Ry., 480.13 miles, except as stated next below.	5,750,000 00	5%	287,500 00
June 1, 1895	June 1, 1905	Grand Rapids, Newaygo & Lake Shore Railroad Co. First mortgage on ten miles Newaygo to White Cloud.	19,000 00	7%	1,330 00
May 1, 1901	May 1, 1901	Chicago & North Michigan Railroad Co. Authorized issue, \$1,000,000. First mortgage on line Boardman Jct. to Bay View. 79.00 miles. — 9.21 — Williamsburg to Elk Rapids — 10.31 —	1,600,000 00	5%	\$3,310 00
April 1, 1900	April 1, 1900	Detroit, Grand Rapids & Western Railroad Co. Authorized issue, \$5,000,000. First mortgage on line formerly owned by the D. & G. R. R. 379.73 miles.	\$5,750,160 43	4%	230,006 65
Aug. 1, 1900	Aug. 1, 1900	Grand Rapids & Western Railroad Co. Authorized issue, \$1,000,000. First mortgage on S. & H. R. R. 47.79 miles.	1,000,000 00	4%	40,000 00
Mar. 1, 1900	Mar. 1, 1900	Grand Rapids, Building & Equipment Railroad Co. Authorized issue, \$1,000,000. First mortgage on line of G. R. & S. R. R. 21 miles.	1,000,000 00	5%	50,000 00
April 1, 1900	April 1, 1900	The Western Equipment Co., Ltd. Secured by 100 flat cars and 100 refrigerator cars.	130,000 00	4%	5,200 00
Oct. 1, 1900	Oct. 1, 1900	The Marquette Equipment Co., Ltd. Secured by 900 box cars, 200 coal cars, 10 caboose cars and 17 locomotives. This Chicago & West Michigan Railway Co. Company. Receipt. This Receipt has been all called in and interest on same has ceased.	700,000 00	5%	35,000 00
Various	Various	Various	5,133 33		\$1,493,333 33



**E.**  
**CONSTRUCTION ACCOUNT**

FOR THE YEAR ENDING DECEMBER 31, 1902.

Jan. 1. To Balance		\$54,829.18	64
Additions during the year:—			
Discount on \$2,105,000.00 P. M. R. R. Co.			
4% bonds sold this year	\$157,875	00	
Expenditures for			
New Equipment	1,028,343	84	
Bonds of Michigan Equipment Co. due and paid	143,000	00	
Wallin Land, Grand Rapids	2,453	80	
St. Louis Cooperage Property, Rapid City	3,114	25	
Gunn Folding Bed Property, Grand Rapids	1,319	71	
Northville-Nowi, Change of Grade	34,459	57	
Flint, " "	26,904	16	
Canton, " "	3,119	03	
Horton, " "	10,216	88	
Reed City, " "	2,085	01	
Farwell, " "	384	26	
Holly, " "	2,369	49	
Grand Blanc, " "	21,894	74	
Ewart-Sears, " "	94,856	31	
Allegan Extension	32,279	93	
Port Huron Ferry Slip	15,012	76	
Old account G. R., K. & S. E. R. R.	2,574	03	
Preliminary Surveys, Howard City-Newaygo	5,167	97	
Detroit Freight House extension, Balance	7,990	26	
New Car Ferry No. 18	394,108	43	
Real Estate for new yards, Grand Rapids	36,326	83	
" " Saginaw	3,350	00	
" " Ludington	50,415	02	
" " Grand Rapids	56,615	72	
Ludington Ferry Slip	8,584	27	
Paving Jefferson Street, Bay City	6,712	20	
Passenger Station, new, Bay City	12,809	87	
Bridge over Grand River, Grand Rapids	42,724	47	
Wealthy Ave. Warehouse, " "	6,388	30	
New roundhouse and turntable, Saginaw	25,166	09	
		2,238,622	27
		\$57,067,802	91

**CREDIT.**

By Old Accounts C. & W. M. Ry.	\$412	94	
" " D., G. R. & W. R. R.	114	35	
" " F. & P. M. R. R.	2,055	15	
Land sold various points	3,502	50	
Received from Pentwater & Manistee R. R.	150	30	
		6,235	24
		\$57,061,567	67

## F.

## GENERAL IMPROVEMENT FUND

FOR YEAR ENDING DECEMBER 31, 1902.

1902.

By Balance January 1st . . . . .	\$172,900 94	
Received from sale of Locomotives . . . . .	1,650 00	
" " Sundry Credits . . . . .	36 00	
Net receipts of Land Department for year 1902 . . . . .	21,764 67	
Transferred from Profit and Loss Account for year 1902 . . . . .	200,000 00	\$396,351 61

## Expenditures on account of

## BRIDGES:

Riverside . . . . .	\$9,394 50	
Milford, one-half cost . . . . .	4,486 89	
Kidd . . . . .	865 79	
Newaygo, one-half cost . . . . .	*9,670 68	
Paw Paw River, No. 1 . . . . .	4,861 31	
" " No. 2 . . . . .	*1,589 32	
Alma . . . . .	*3,140 93	
Eagle, one-half cost . . . . .	210 02	
Graham, " " . . . . .	333 56	
North Bradley, " " . . . . .	*1,513 41	
Saginaw, Wadsworth Street Culvert, . . . . .	*4,120 62	\$40,187 03

## BUILDINGS:

Bay City, Engine House . . . . .	\$1,964 23	
Ludington, Turntable . . . . .	448 79	
Plymouth, Engine House . . . . .	1,535 40	
" Yard Office . . . . .	232 38	
Rapid City, Tank . . . . .	581 77	
New Buffalo, Turntable . . . . .	641 38	
Toledo, Transfer Shed, one-half cost . . . . .	750 18	
Grand Ledge Coal Chute . . . . .	7,647 10	13,801 23
Ottawa Beach Dock . . . . .		775 62

## YARDS AND SIDE TRACKS:

Luddington . . . . .	*\$1,868 33	
Flint . . . . .	844 06	
Plymouth . . . . .	4,581 53	
Grand Ledge . . . . .	3,954 33	
Baldwin . . . . .	259 98	
Grand Rapids . . . . .	*358 38	11,866 63

## PASSING TRACKS:

Kaleva . . . . .	\$694 45	
Coloma . . . . .	512 08	
Sunfield . . . . .	904 05	
Sidney . . . . .	464 70	
Thompsonville . . . . .	689 82	
Okemos . . . . .	428 29	
Woodbury . . . . .	382 97	
St. Joseph . . . . .	1,317 69	5,394 05

Carried forward . . . . . \$396,351 61

\* These items are uncompleted.

# PERE MARQUETTE RAILROAD COMPANY.

21

## F.

<i>Brought forward</i>					\$396,351 61
<b>COMMERCIAL TRACKS:</b>					
Saginaw, Wadsworth Street		\$121	50		
Grand Rapids, Braudy		319	49		
" Thum Co.		618	40		
" Macey Co.		629	67		
Delray, Franklin Salt Co.		3,387	59		
Midland, Dow Chemical Co.		2,778	90		
Alma, Sugar Co.		328	00		
Croswell, "		3,053	58		
Novi, Elevator Track		71	79		
St. Louis, Sugar Co.		*1,642	47		
Clyde, Ice House		394	16		
Flint Imperial Wheel Company		1,059	56		
Sebewaing, Sugar Co.		375	62		
St. Louis, Chemical Co.		*596	47	\$15,477	20
<b>MISCELLANEOUS SIDE TRACKS:</b>					
New Buffalo, Engine House		\$235	06		
Benton Harbor, Storage Track		744	54		
Petosky, "		1,701	07	2,680	67
<b>INTERLOCKERS:</b>					
Otter Lake		\$2,424	17		
Grand Junction		*1,722	97		
Hoyt		*4,208	00		
Vassar		1,364	50	9,719	64
<b>MISCELLANEOUS:</b>					
Elmdale, Sink Hole		\$1,356	14		
Three New Switch Engines		34,129	35		
Re-Survey Saginaw Dist.		*6,093	06	41,578	55
Total					141,480 62
Balance, December 31, 1902					\$254,870 99

\* These items are uncompleted.

## G.

### INVESTMENT ACCOUNT.

ADDITIONS DURING THE YEAR 1902.

#### OTTAWA BEACH PROPERTY.

Improvements, including addition of					
28 rooms to Hotel Ottawa		\$6,563	33		
Additional Furniture and Fixtures		3,030	70	\$9,594	03
Purchase of Golf Grounds		\$6,000	00		
Paid for laying out Grounds		518	24		
Cost of Club House		1,090	00	7,608	24
Total					\$17,202 27

## H.

## COMPARATIVE STATEMENT EARNINGS AND EXPENSES.

1902 AND 1901.

RAIL AND MARINE EARNINGS.	1902.	1901.	INCREASE.	DECREASE.
From Freight . . . . .	\$6,831,625.66	\$6,257,373.30	\$574,252.36	
" Passenger . . . . .	2,739,950.25	2,573,936.62	166,013.63	
" Express . . . . .	149,019.58	130,503.10	18,516.48	
" Mail . . . . .	220,479.24	220,725.85		246.61
" Telegraph . . . . .	2,168.24	7,290.39		5,122.15
" Miscellaneous . . . . .	12,132.10	11,345.94	786.16	
	\$9,955,375.07	\$9,201,175.20	\$754,199.87	
RAIL EARNINGS.				
From Freight . . . . .	\$6,367,048.90	\$5,753,533.36	\$613,515.54	
" Passenger . . . . .	2,658,594.21	2,494,135.69	164,458.52	
" Express . . . . .	147,819.58	129,296.86	18,522.72	
" Mail . . . . .	217,366.74	217,605.85		239.11
" Telegraph . . . . .	2,168.24	7,290.39		5,122.15
" Miscellaneous . . . . .	12,132.10	11,345.94	786.16	
	\$9,405,129.77	\$8,613,208.09	\$791,921.68	
MARINE EARNINGS.				
From Freight . . . . .	\$464,576.76	\$503,839.94		39,263.18
" Passenger . . . . .	81,356.04	79,800.93	\$1,555.11	
" Express . . . . .	1,200.00	1,206.24		6.24
" Mail . . . . .	3,112.50	3,120.00		7.50
	\$550,245.30	\$587,967.11		37,721.81
EXPENSES.				
General Expenses . . . . .	\$230,474.03	\$199,389.13	\$31,084.90	
Maintenance of Way and Structures . . . . .	1,480,422.42	1,586,996.52		106,574.10
Maintenance of Equipment . . . . .	1,040,473.87	1,038,197.85	2,276.02	
Conducting Transportation . . . . .	3,906,673.40	3,581,268.51	325,404.89	
Operating Marine Equipment, Taxes . . . . .	462,824.67	422,187.59	40,637.08	
	389,665.33	282,172.42	107,492.91	
Total . . . . .	\$7,510,533.72	\$7,110,212.02	\$400,321.70	
Net Earnings . . . . .	\$2,444,841.35	\$2,090,963.18	\$353,878.17	
Interest Charges . . . . .	1,451,704.56	1,356,388.74	95,315.82	
	\$993,136.79	\$734,574.44	258,562.35	
Average Expense ratio, including Taxes . . . . .	75.44	77.27		1.83
Excluding Taxes . . . . .	71.53	74.21		2.68
Mileage of Road operated . . . . .	1,828.27	1,637.68		941
Gross Earnings per mile . . . . .	\$5,445.24	\$5,002.81	\$442.43	
Operating Expenses per mile . . . . .	4,108.00	3,865.92	242.08	
Net Earnings per mile . . . . .	\$1,337.24	\$1,136.89	\$200.35	
Revenue Train Mileage, Fr't . . . . .	3,779,308	3,562,343	216,965	
" " " Pass'r . . . . .	3,302,072	3,217,524	84,548	
Earnings, Freight Train Mile, . . . . .	\$1.807	\$1.756	\$0.051	
" " " Pass'r Train Mile . . . . .	0.946	0.915	0.031	

**I.**  
**CLASSIFICATION OF FREIGHT TONNAGE**  
FOR THE YEAR 1902.

COMMODITY.	TONNAGE.	TOTAL TONS.	PERCENT.	TOTAL PERCENT.
<b>PRODUCTS OF AGRICULTURE:—</b>		1,71,254		16.26
Grain . . . . .	261,360		3.63	
Flour . . . . .	110,131		1.53	
Other Mill Products . . . . .	112,998		1.57	
Hay . . . . .	208,033		2.89	
Fruit and Vegetables . . . . .	260,322		3.61	
Potatoes . . . . .	218,410		3.03	
<b>PRODUCTS OF ANIMALS:—</b>		153,777		2.14
Live Stock . . . . .	71,400		.99	
Dressed Meats . . . . .	7,900		.11	
Other Packing House Products, . . . . .	29,378		.41	
Poultry, Game and Fish . . . . .	4,813		.07	
Wool . . . . .	6,818		.09	
Hides and Leather . . . . .	33,468		.47	
<b>PRODUCTS OF MINES:—</b>		2,132,615		29.60
Anthracite Coal . . . . .	100,023		1.39	
Bituminous " . . . . .	1,723,710		23.93	
Stone, Sand and other like . . . . .	263,983		3.66	
articles . . . . .	44,899		.62	
Salt . . . . .				
<b>PRODUCTS OF FOREST:—</b>		1,880,548		26.11
Lumber . . . . .	943,554		13.10	
Logs . . . . .	792,604		11.00	
Shingles . . . . .	144,390		2.01	
<b>MANUFACTURES:—</b>		937,189		13.01
Petroleum and other Oils . . . . .	41,040		.57	
Iron, Pig and Bloom . . . . .	81,350		1.13	
Iron and Steel Rails . . . . .	33,773		.47	
Other Castings and Machinery . . . . .	72,944		1.01	
Bar and Sheet Metal . . . . .	50,072		.70	
Cement, Brick and Lime . . . . .	213,024		2.96	
Agricultural Implements . . . . .	19,705		.27	
Wagons, Carriages, Tools, etc. . . . .	20,833		.29	
Wine, Liquors and Beers . . . . .	29,397		.41	
Household Goods & Furniture, . . . . .	46,461		.64	
Other Manufactures . . . . .	328,596		4.56	
Merchandise . . . . .		310,702		4.31
Ice . . . . .		43,527		.60
Miscellaneous . . . . .		574,027		7.97
<b>Total</b> . . . . .		7,203,639		100%

## J.

COMPARATIVE DETAILED STATEMENT OF OPERATING EXPENSES  
FOR THE YEARS 1902 AND 1901.

GENERAL EXPENSES.	1902.	1901.	INCREASE.	DECREASE.
Salaries of General Officers . . . . .	\$47,933 28	\$54,918 26	. . . . .	\$6,984 98
Salaries of Clerks and Attendants . . . . .	88,399 18	76,463 33	\$11,935 85	. . . . .
General Office Expenses and Supplies . . . . .	9,208 41	10,941 06	. . . . .	1,732 65
Insurance . . . . .	18,404 61	14,328 51	4,176 10	. . . . .
Law Expenses . . . . .	29,000 20	24,354 83	4,645 37	. . . . .
Stationery and Printing (Gen. Offices) . . . . .	9,318 17	11,783 28	. . . . .	2,465 11
Other General Expenses . . . . .	28,210 18	6,699 86	21,510 32	. . . . .
Total . . . . .	\$230,474 03	\$199,389 13	\$31,084 90	. . . . .
MAINTENANCE OF WAY AND STRUCTURES.				
Repairs of Roadway . . . . .	\$826,019 41	\$884,718 18	. . . . .	\$58,698 77
Renewals of Rails . . . . .	57,092 57	73,755 38	. . . . .	16,662 81
Renewals of Ties . . . . .	306,951 69	337,202 82	. . . . .	30,251 13
Repairs and Renewals of Bridges and Culverts . . . . .	96,392 78	90,976 34	\$5,416 44	. . . . .
Repairs and Renewals of Fences, etc. . . . .	47,163 04	48,968 70	. . . . .	1,805 66
Repairs and Renewals of Buildings and Fixtures . . . . .	117,095 81	119,969 67	. . . . .	2,873 86
Repairs and Renewals of Docks and Wharves . . . . .	5,095 10	7,344 26	. . . . .	2,249 16
Repairs and Renewals of Telegraph . . . . .	19,030 85	16,321 28	2,709 57	. . . . .
Stationery & Printing (Way & Struc.) . . . . .	1,272 90	3,418 81	. . . . .	2,145 93
Other Way and Structure Expenses . . . . .	2,308 27	4,321 06	. . . . .	2,012 79
Total . . . . .	\$1,480,422 42	\$1,580,906 52	. . . . .	\$100,574 10
MAINTENANCE OF EQUIPMENT.				
Superintendence of Equipment . . . . .	\$24,684 08	\$24,355 13	\$328 95	. . . . .
Repairs and Renewals of Locomotives . . . . .	440,430 24	434,297 05	6,133 19	. . . . .
"    "    "    Passenger Cars . . . . .	158,650 62	189,441 44	. . . . .	\$30,790 82
"    "    "    Freight Cars . . . . .	348,774 60	312,188 22	36,586 38	. . . . .
"    "    "    Work Cars . . . . .	27,525 90	26,402 33	1,123 57	. . . . .
"    "    "    Shop Machinery and Tools . . . . .	21,156 42	25,664 40	. . . . .	4,507 98
Stationery and Printing (Equipment) . . . . .	3,480 72	3,303 43	177 29	. . . . .
Other Equipment Expenses . . . . .	25,771 29	22,545 85	. . . . .	6,774 56
Total . . . . .	\$1,040,473 87	\$1,038,197 85	\$2,276 02	. . . . .

J.

COMPARATIVE DETAILED STATEMENT OF OPERATING EXPENSES  
FOR THE YEARS 1902 AND 1901.—*Concluded.*

	1902.	1901.	INCREASE.	DECREASE.
CONDUCTING TRANSPORTATION.				
Superintendence (Transportation) . . .	\$114,198 16	\$99,732 02	\$14,466 14	
Engine and Roundhouse Men . . .	630,203 41	602,025 15	28,178 26	
Fuel for Locomotives . . .	798,341 04	652,725 68	145,615 36	
Water Supply for Locomotives . . .	39,806 57	38,973 50	833 07	
Oil, Tallow and Waste for Locomotives, . . .	30,866 40	30,502 29	364 11	
Other Supplies for Locomotives . . .	18,404 35	15,985 70	2,418 65	
Train Service . . .	487,058 11	466,533 92	20,524 19	
Train Supplies and Expenses . . .	92,137 74	105,794 08		\$13,656 34
Switchmen, Flagmen and Watchmen . . .	265,601 74	241,401 42	24,200 32	
Telegraph Expenses . . .	98,925 41	91,664 52	7,260 89	
Station Service . . .	583,981 20	553,239 40	30,741 80	
Station Supplies . . .	37,707 34	34,279 03	3,428 31	
Switching Charges . . .	122,461 02	80,163 65	42,297 37	
Car Mileage . . .	100,653 67	90,892 88	9,760 79	
Hire of Equipment . . .	11,689 75	16,254 09		4,564 34
Loss and Damage . . .	58,410 09	50,152 18	8,257 91	
Injuries to Persons . . .	39,933 88	51,983 94		12,050 06
Clearing Wrecks . . .	13,518 91	13,875 72		356 81
Advertising . . .	29,694 40	36,340 18		6,645 78
Outside Agencies . . .	85,787 20	84,085 57	1,701 63	
Rents for Tracks, Yards and Terminals, . . .	208,171 70	173,917 70	34,254 00	
Rents of Buildings and other Property . . .	(less) 17,126 48	(less) 6,050 84		11,075 64
Stationery and Printing (Transportat'n). . .	55,835 63	52,032 96	3,802 67	
Other Transportation Expenses . . .	412 16	4,763 77		4,351 61
Total . . .	\$3,906,673 40	\$3,581,268 51	\$325,404 89	
Total Rail Expenses . . .	\$6,658,043 72	\$6,405,852 01	\$252,191 71	
LAKE TRANSPORTATION.				
Operating Marine Equipment . . .	462,824 67	422,187 59	40,637 08	
Grand Total Rail and Lake . . .	\$7,120,868 39	\$6,828,039 60	\$292,828 79	



**K.****GROSS EARNINGS, OPERATING EXPENSES AND NET EARNINGS, BY MONTH,**

Earnings.	January.	February.	March.	April.	May.	June.
Freight . . . . .	\$520,758.73	465,634.60	577,819.45	563,033.72	517,864.21	498,398.58
Passenger . . . . .	167,760.31	145,330.01	190,346.87	180,511.76	186,378.86	222,037.47
Express . . . . .	8,650.00	8,650.00	8,650.00	8,650.00	18,650.00	8,650.00
Mail . . . . .	17,957.89	17,957.89	18,412.97	17,955.49	17,962.89	18,420.17
Telegraph . . . . .	523.26	460.16	589.31	594.81	. . .	. 70
Miscellaneous . . . .	846.02	914.23	959.30	853.54	865.30	1,046.36
Marine . . . . .	55,500.68	37,076.99	35,577.74	37,097.70	33,076.91	39,776.80
Total . . . . .	\$771,996.89	676,023.88	832,355.64	808,697.02	774,798.17	788,330.31

**OPERATING EXPENSES.**

General Expenses . . .	\$22,476.44	16,280.03	17,403.62	19,807.20	15,631.35	17,539.77
Maintenance of Way & Structures . . . . }	124,045.02	100,278.72	110,845.57	118,625.43	117,436.34	124,035.21
Maintenance of Equipm't,	98,275.38	91,004.45	98,051.66	81,231.16	84,529.57	75,529.45
Conducting Transportat'n,	345,787.02	286,682.34	331,693.09	318,033.42	295,706.95	295,427.13
Marine . . . . .	32,899.12	33,690.63	30,927.78	32,386.53	33,930.36	35,408.10
Total . . . . .	\$623,482.98	527,936.17	588,921.72	560,083.74	547,234.57	547,939.66
Taxes . . . . .	28,364.79	28,304.62	27,979.82	28,230.55	28,053.85	28,269.37
Total Oper. Exp. & Taxes,	\$651,847.77	556,240.79	616,901.54	588,314.29	575,288.42	576,208.96
Net Earnings . . . .	\$120,149.12	119,783.09	215,454.10	220,382.73	199,509.75	212,121.41

PERE MARQUETTE RAILROAD COMPANY.

27

K.

FOR THE YEAR ENDING DECEMBER 31, 1902.

July.	August.	September.	October.	November.	December.	Total.	Per cent. of Earnings.
447,655.91	480,139.62	586,742.46	616,294.26	542,606.41	550,100.65	6,367,048.90	63.96
291,575.40	333,220.85	270,505.94	227,772.86	204,775.66	238,378.22	2,658,594.21	26.71
8,650.00	18,650.00	8,650.00	8,650.00	28,650.00	12,669.58	147,819.58	1.48
17,977.64	17,983.71	18,393.52	17,966.43	17,962.43	18,415.71	217,366.74	2.18
.	.	.	.	.	.	2,168.24	.02
1,317.86	1,213.16	1,195.29	975.71	996.48	948.85	12,132.10	.12
40,930.89	56,250.37	49,681.99	67,491.15	49,727.61	48,056.47	550,245.30	5.53
808,107.70	907,457.71	935,169.20	939,150.41	844,718.59	868,569.48	9,955,375.07	100.00

15,667.98	14,074.30	18,563.60	16,150.77	16,212.98	40,666.04	230,474.03	2.32
124,500.84	128,836.61	135,611.67	131,601.65	133,029.08	131,776.24	1,480,422.42	14.87
82,426.92	76,767.91	85,664.42	96,254.43	78,178.32	92,560.16	1,040,473.87	10.45
312,488.68	329,315.44	341,998.91	361,950.91	338,271.03	359,318.48	3,906,673.40	39.24
36,502.64	41,123.87	44,975.77	43,448.59	45,138.64	52,392.64	462,824.67	4.65
571,387.06	590,118.13	626,814.37	649,406.35	610,830.05	676,713.56	7,120,868.39	71.53
32,513.51	30,343.00	29,909.78	26,822.49	29,158.18	71,715.47	389,665.33	3.91
603,900.57	620,461.13	656,724.15	676,228.84	639,988.23	748,429.03	7,510,533.72	75.44
204,207.13	286,996.58	278,445.05	262,921.57	204,730.36	120,140.45	2,444,841.35	24.56

1134

## L.

## FREIGHT STATISTICS.

	1901.	1902.
Freight Earnings . . . . .	\$5,753,533.36	\$6,367,048.90
Miles run, freight trains . . . . .	3,562,363	3,776,734
Miles run by loaded freight cars . . . . .	53,979,474	58,643,812
Miles run by empty freight cars . . . . .	18,603,986	22,119,053
Number of tons of revenue freight carried . . . . .	6,439,447	7,203,639
Number of tons of revenue freight carried one mile . . . . .	791,039.076	906,063.784
Number of tons of revenue freight per train mile . . . . .	223.06	239.91
Number of tons of revenue freight per loaded car . . . . .	14.66	15.45
Number of tons of revenue freight per mile of road . . . . .	3.501	3.940
Average number of loaded freight cars per train . . . . .	15.45	15.53
Average number of empty freight cars per train . . . . .	5.42	5.85
Average number of loaded and empty freight cars per train . . . . .	20.37	21.38
Average miles each ton of revenue freight was carried . . . . .	122.84	125.78
Average amount received per ton of revenue freight . . . . .	\$0.8935	\$0.8838
Average revenue from freight per train mile . . . . .	\$1.615	\$1.686
Average revenue per ton of revenue freight per mile . . . . .	\$0.00727	\$0.00703
Average revenue from freight per mile of road . . . . .	\$3,188.61	\$3,482.55

## PASSENGER STATISTICS.

* Passenger earnings . . . . .	\$2,494,135.69	\$2,658,594.21
Miles run, passenger trains . . . . .	3,217,534	3,304,646
Number of passengers carried . . . . .	3,388,443	3,593,454
Number of passengers carried one mile . . . . .	123,739.849	130,049.384
Average miles each passenger was carried . . . . .	36.58	36.19
Average revenue received from each passenger . . . . .	\$0.7773	\$0.7398
Average revenue from passengers per train mile . . . . .	\$0.7751	\$0.8045
Average revenue per passenger per mile . . . . .	\$0.0204	\$0.0204
Average revenue from passengers per mile of road . . . . .	\$1,356.09	\$1,454.16

## TONNAGE, COMPANY FREIGHT HAULED DURING THE YEAR 1902.

## CARRIED ON REVENUE TRAINS ONLY.

	Tons.	Tons One Mile
Coal . . . . .	531,752	94,446,779
Material and supplies . . . . .	273,989	27,251,074
Total . . . . .	805,741	121,697,853

\*Mail and express earnings \$365,186.34 not included.

# PERE MARQUETTE RAILROAD COMPANY.

29

## L.

### MARINE STATISTICS.

	1902.	1901.
<b>Freight:</b>		
Earnings from freight . . . . .	\$464,576.76	\$503,839.94
Number tons revenue freight carried . . .	1,009,114	1,022,419
Average amount received from each ton . .	\$0.46038	\$0.49279
<b>Passenger:</b>		
Earnings from passengers . . . . .	\$81,356.04	\$79,800.93
Number of passengers carried . . . . .	44,224	39,642
Average amount received from each passenger	\$1.84	\$2.01
<b>Express:</b>		
Earnings from express . . . . .	\$1,200.00	\$1,206.24
<b>Mails:</b>		
Earnings from mails . . . . .	\$3,112.50	\$3,120.00

### MISCELLANEOUS STATISTICS.

Total miles run by revenue trains . . . . .	7,081,380	6,779,867
Maintenance of equipment per revenue train mile . .	\$0.1469	\$0.1531
Station service per revenue train mile . . . . .	\$0.0825	\$0.0816
Train service per revenue train mile . . . . .	\$0.0688	\$0.0688
Engine and roundhouse men per revenue train mile .	\$0.0890	\$0.0888
Train and station supplies per revenue train mile . .	\$0.0183	\$0.0207
Fuel for locomotives per revenue train mile . . . .	\$0.1127	\$0.0963
Oil, tallow and waste for locomotives per revenue train mile . . . . .	\$0.0044	\$0.0045
All other expenses per revenue train mile, including taxes . . . . .	\$0.5380	\$0.5349
Total operating expenses per revenue train mile, including taxes . . . . .	\$1.0606	\$1.0487
Total operating expenses per revenue train mile, excluding taxes . . . . .	\$1.0056	\$1.0071
Percentage of expenses to earnings, including taxes .	75.44	77.27
Percentage of expenses to earnings, excluding taxes .	71.53	74.21

## M.

## MILEAGE.

December 31, 1902.

## Divisions, including Branches thereon:

		Main Line.	Business Producing Branches, Miles.
Toledo	Division, between Alexis and Saginaw	174.20	124.51
Bay City	" " Saginaw and Bay City	25.66	19.31
Ludington	" " Saginaw and Ludington	190.75	78.55
Manistee	" " Merritt and Manistee	27.06	8.17
Port Huron	" " Saginaw and Port Huron	124.39	13.49
Port Austin	" " Port Huron and Grindstone City	110.63	17.71
Petoskey	" " Grand Rapids and Bay View	250.81	15.96
Big Rapids	" " Herry and Big Rapids	52.04	5.15
Muskegon	" " Allegan and Pntwater	132.97	47.00
Detroit	" " Plymouth and Delray	29.42	11.78
Grand Rapids	" " Plymouth and Grand Rapids	137.15	52.01
Saginaw	" " Findale and Paines	102.58	84.16
Ionia	" " Grand Ledge and Big Rapids	166.77	13.39
La Crosse	" " La Crosse and New Buffalo	37.61	19.63
Chicago	" " New Buffalo and Grand Rapids	114.94	96.71
Saginaw, Tuscola and Huron R. R.		65.79	20.30
Total mileage owned		1,742.81	25.50 586.05

## Leased Lines:

Grand Rapids, Kalkaska & South Eastern R. R.	12.90	7.83	7.95
--	-------	------	------

## Trackage Rights:

M. C. R. R. Co.	between Lansing and North Lansing	1.04	
"	" " Merahon and Paines	6.70	
Ann Arbor R. R.	" " Toledo and Alexis	6.63	
Detroit Union R. R. & Station Co.	Delray and 18th St., Detroit	3.14	3.44
Fort St. Union Depot Co.	3d St. and 18th St., Detroit	1.36	
12th St. Yards, Detroit			5.51
Detroit & Mackinaw Bridge, Bay City, (P. M. owns one half)		.26	
		19.23	8.95

## RECAPITULATION.

Mileage owned	1,742.81	25.50	586.05
Leased lines	32.90	7.83	7.95
Trackage rights	10.23		8.95
Total	1,794.94	33.33	602.95
Add business producing branches	33.23		
Total	1,828.17		

## PERE MARQUETTE RAILROAD COMPANY.

31

N.

## ROLLING STOCK IN SERVICE, DECEMBER 31, 1902.

## Locomotives Owned by P. M. R. R. Co.:—

8 wheel . . . . .	114	
10 wheel . . . . .	32	
Moguls . . . . .	38	
Consolidated . . . . .	14	
Chautauqua . . . . .	3	
Switch . . . . .	43	
Special . . . . .	1	
Narrow Gauge . . . . .	4	249

## Locomotives Owned by Marquette Equipment Co., Ltd.:—

Moguls . . . . .	4	
Consolidated . . . . .	7	
Chautauqua . . . . .	5	
Switch . . . . .	1	17
		266

## Freight Cars Owned by P. M. R. R. Co.:—

Refrigerator . . . . .	11	
*Box . . . . .	4,204	
Furniture . . . . .	396	
Stock . . . . .	86	
Charcoal . . . . .	103	
Flat . . . . .	2,397	
Coal . . . . .	907	
Miscellaneous . . . . .	131	
Caboose Cars . . . . .	116	8,351

## Freight Cars Owned by Marquette Equipment Co., Ltd.:—

Box . . . . .	900	
Coal . . . . .	200	
Caboose . . . . .	10	1,110

## Freight Cars Owned by Western Equipment Co.:—

Refrigerator . . . . .	99	
Flat . . . . .	100	199
		960

## Passenger Cars:—

Official Cars . . . . .	5
Sleepers . . . . .	2
Parlor . . . . .	15
Parlor Observation . . . . .	4
Buffet Parlor . . . . .	1
Café Coaches . . . . .	4
First-Class Coaches . . . . .	94
Smokers . . . . .	59
Baggage and Smokers . . . . .	31

## PERE MARQUETTE RAILROAD COMPANY.

Baggage, Mail and Smokers	.	.	.	.	.	.	.	.	.	0
Mail	.	.	.	.	.	.	.	.	.	0
Baggage, Mail and Express	.	.	.	.	.	.	.	.	.	25
Baggage	.	.	.	.	.	.	.	.	.	14
Baggage and Express	.	.	.	.	.	.	.	.	.	5

## Narrow Gauge Car Equipment:—

Box	.	.	.	.	.	.	.	.	.	60
Refrigerator	.	.	.	.	.	.	.	.	.	3
Stock	.	.	.	.	.	.	.	.	.	13
Coal	.	.	.	.	.	.	.	.	.	8
Flat	.	.	.	.	.	.	.	.	.	20
Flat (leased)	.	.	.	.	.	.	.	.	.	10
Snow Plow	.	.	.	.	.	.	.	.	.	0
Tool Car	.	.	.	.	.	.	.	.	.	0
Caboose	.	.	.	.	.	.	.	.	.	1
Coaches	.	.	.	.	.	.	.	.	.	5
Baggage, Mail and Express	.	.	.	.	.	.	.	.	.	1
Baggage, Mail and Smoker	.	.	.	.	.	.	.	.	.	0

\*1920 Box cars owned by F. & P. M. Series B, Trust, included.



PERE MARQUETTE RAILROAD COMPANY.

33

O.

BOSTON, December 31, 1902.

WILLIAM W. CRAPO, } TRUSTEES UNDER MARQUETTE EQUIPMENT CO.,  
OLIVER W. MINK, } LIMITED, MORTGAGE, DATED AUGUST 24, 1900.  
CHARLES MERRIAM, }

In account with

PERE MARQUETTE RAILROAD COMPANY.

Balance cash on hand, December 31, 1901	\$46,959 48
Received from Pere Marquette Railroad Co., from January 1, 1902, to December 31, 1902, inclusive, as payments to the Sinking Fund, as provided in said Mortgage	114,000 00
Received interest on deposits to December 31, 1902	1,515 94
Total	\$162,475 42
Paid and cancelled \$119,000 of the \$127,000 Marquette Equip- ment Co., Limited, 1st Mortgage 5% bonds, \$1,000 each, with coupons of and from April 1, 1903, attached, at par, flat, drawn for payment October 1, 1902	119,000 00
Balance cash on hand December 31, 1902	\$43,475 42
Bonds drawn for payment at par October 1, 1902, on which date interest ceased, but which have not yet been presented to the Trustees: \$8,000 Nos. 137, 139, 143, 152, 160, 165, 677, 679	8,000 00
Balance available for future bond drawings	\$35,475 42

Dec. 31, 1902.

Total bonds outstanding at this date, not including the \$8,000  
bonds above mentioned already drawn for payment \$797,000 00

**P.**

## LAND DEPARTMENT.

DETROIT, MICH., January 1, 1903.

TO CHARLES MERRIAM, *Treasurer*.

Herewith I submit statement of the business of the Land Department during the year 1902:—

There has been sold by the Land Commissioner 4,543<sup>51</sup>/<sub>100</sub> acres at an average price of \$5.54 per acre, amounting to . . . \$25,184 29

The receipts during 1902 from land sales and land contracts were as follows:—

Principal . . . . .		\$22,682 83
Interest on Contracts . . . . .		2,663 43
		<hr/>
		\$25,346 23
Interest received on Deposits . . . . .		443 39
		<hr/>
		\$25,789 62
Payments have been made for Taxes . . . . .	\$2,603 95	
Expenses of Land Commissioner's Office . . . . .	1,046 00	
Trustee and Clerical Services . . . . .	375 00	\$4,024 95
		<hr/>
Balance paid to Charles Merriam, Treasurer . . . . .		21,764 67
		<hr/>
		\$25,789 62

Bills Receivable on hand December 31, 1902:—

Principal . . . . .	\$35,714 70
Interest . . . . .	5,814 49
	<hr/>
	\$41,529 19

There remain unsold at this date 30,341<sup>28</sup>/<sub>100</sub> acres.

WM. W. CRAPO,

*Trustee.*

1142 HENRY C. ADAMS recalled for the defendant.

Redirect examination by Mr. KNAPPEN :

Question. Prof. Johnson in his capitalization of the earnings of the Michigan Central Railroad Company, has added to his capitalization rate the rate of taxation assessed on Michigan railroads for 1902. In your judgment, is that proper ?

Mr. BUTTERFIELD : I object to that as incompetent and irrelevant and not proper sur-rebuttal.

Answer. That is not a proper method in my opinion for the valuation as required in this case because.

1st. There is no evidence warranting the conclusion that the cash value of Michigan railroad properties as measured by the market quotations of securities was less on April 14, 1902, than it would have been had act 173 of 1901 not been passed, but going outside of the quotations there are some other considerations that bear upon the point in question.

Michigan railway property shows the same general tendency towards an increase in price of their securities as the railway properties of other States. Michigan also contributed her full share to the railway construction of the United States during the year in question, thus indicating that investors in railway property could not have been influenced by the fear of increased taxation.

So far as I can see from a rather careful study of the situation, there is no evidence of a depressing influence of act 173, and it 1143 does not seem to me that the assessor is called upon in valuing any railway property at any particular time, to anticipate results that may or may not become effective in the future.

2nd. To reduce the values of railway property to an amount equal to the capitalization of the increased tax, holding in mind the so-called Adams-Cooley method of appraisal, would be to treat railway property differently from the manner in which local assessors treat general property. For example, the assessment of 1903 as compared with that of 1902 shows an increase of rate as well as an increase in valuation, meaning an increased payment on account of general property. The local assessor after the increased taxes affect the property's cash value, then enters ~~the~~ new value on his book in a new appraisal. This is emphasized ~~by~~ the fact that the purpose of an annual appraisal is to enable changed commercial conditions to find their way into the assessments. So with annual assessments there is no need to anticipate results.

3d. The Adams-Cooley method of valuation makes no allowance for speculative or anticipated values, and should not be called upon to bear the burden — the anticipated deduction in value. This perhaps could not be said of a valuation by means of market quotations of stocks and bonds, as according to this rule anticipation of future gain is permitted in the present valuation, but it does seem a pertinent consideration when the question of adding a tax rate upon

general property to the rate of capitalizing the net surplus comes in question.

4th. The doctrine of capitalization is incomplete except in connection with those of the diffusion of taxes. This is true because no tax would be capitalized that can be diffused. Therefore, before we can say that an increased tax will result in a reduction of value of the property on which laid, we must be satisfied that the commercial conditions, so far as the prices that can be secured for services rendered and costs incident thereto are concerned, will not be  
1144 influenced by the fact of increased taxation.

Any increased burden such as an increased tax which tends to narrow the margin of profit, will result 1st, in an effort to raise the price of the product. And 2nd in an effort to economize the cost, and to the extent to which either of these efforts is successful there is no change in the property's value. In view of the history of technical railway development in the past it seems extremely hazardous to forecast the manner in which an increased tax will show itself in the economies of railway administration. Business is controlled as much or more by fear of loss as of hope of gain, and it is fear that is brought into the field of action when the business man finds his accustomed rate of profit endangered by the imposition of a new tax. Another fundamental principle to be held in mind is the relation which the railway property bears to property in general. The important question is whether the increased taxation has burdened the property in question more highly than general taxes burden general property. If not, there is no inducement for an investor to sell out his investments at a reduced figure for he cannot overlook the question as to what he is to do with his money.

The correct comparison does not lie between the condition of the investment in railway property before and after the imposition of a new tax, but between an investment in railway property after an increased tax and an investment in other form of property. To reduce the valuation of a railway on account of the increased tax, it would be necessary to show that the valuation of this property to the tax included the capitalization of a previous immunity from taxation, which would be a difficult proposition. Investors in railway property must have known that the immunity from taxation could not long be tolerated.

It is essential to proper capitalization of income that it be perpetual. If it be temporary or exposed to unusual risks, the capitalization would be very small. In theory, the extreme limit  
1145 to which the reduction for capitalization on account of increased taxation can be carried in the case in question, is the amount of the increased value prior to 1901 enjoyed by railway properties on account of their exemption from equal taxation.

Prior to 1901 the Michigan railways paid less taxes per mile of line than were paid by the railways of adjacent States, and in general less than those of the United States, being in a relatively better posi-

tion than that occupied by general property and by the railroads of other States. Under such conditions an increased tax will not exert any considerable influence in the property's valuation.

Q. Prof. Johnson stated that it was proper in arriving at the net earnings to be capitalized to allow the payment out of operating expenses in addition to sums necessary to maintain the property, of further sums for the purpose of keeping the property abreast of technical development. In your opinion is that practice proper for the purpose of capitalization for the purpose of taxation.

Mr. BUTTERFIELD: That is objected to as incompetent and irrelevant and not proper sur-rebuttal.

A. It seems to me that in theory, capitalization for taxation purposes rests on what may be termed "integrity of income," meaning a statement of the net income which actually accrues to a property during a specific period—say a year. To burden operating expenses with more than enough to carry on the business and maintain the property equal in condition to that at the beginning of the year, would result in a smaller net income than the true net income.

I have always regarded it as a principle that the earnings of a specific year should be burdened only with the expenses of 1146 that year incident to those earnings. Adding improvements to keep the property abreast of technical developments results in burdening the earnings of that year with expenses more or less permanent in character which does not seem to be in harmony with the true definition of net income.

I make no criticism of the policy of making payments of that class out of current earnings, or maintaining rates sufficient to permit it, for other purposes than taxation. Improvements to keep the road abreast of technical developments result in the development of the property enabling it to operate it more economically and to take care of probably a larger amount of business, resulting in permanent advantage to the corporation, and (under the same objection by Mr. Butterfield) many of these improvements would result in increasing the property's earning capacity, *e. g.* better safety appliances by decreasing the expenditure for loss and damage result in increasing the net earnings which would also be true of locomotives and cars of increased capacity. The capacity of engines and freight cars has been largely increased in the last few years; grades are being reduced and lines straightened, all of which results in increased tonnage per train, and increased speed; and economy results because neither the employees nor the capital involved in moving the traffic are employed for a given amount of earnings for so long a time. It would be difficult to find any of these improvements known as technical developments which do not result either directly or indirectly in financial advantage and increased return.

Q. In your opinion is it proper or permissible that the net earnings of a road for a period of ten years should be taken from which

an average of earnings should be obtained for the purpose of capitalization, and that the road should be allowed to fatten itself or create or add to equipment for the purpose of meeting the depression of low periods.

Mr. BUTTERFIELD: I object to that for the same reason as before.

Mr. KNAPPEN: I wish to say before the question is answered, I am not inviting a discussion on the ten year period. The witness has expressed his opinion fully about the period for which an average should be taken. It is the general question taken together that I am asking.

A. The error in taking a ten year period, including lean years in the past and practically taking out of the earnings of five previous years enough to enable the road to recoup itself for what it might have lost, and in addition to that to take out of the current earnings an amount to provide against lean years in the future, in reality burdens the five years prosperous period with two lean periods and practically so far as the result is concerned, would be taking a fifteen year period. If each decade has lean and fat periods, the fat had ought to be burdened with only one lean period.

I have examined the betterment statement of the Michigan Central, (being Exhibits 2 and 3. May 31, 1904, in connection with the testimony of Mr. Comstock,) showing the betterments on that road charged to operating expenses to determine what amounts contained therein were betterment to existing property, and what were new property, and the results which would have been shown had they not been paid for out of operating expenses. In separating the aggregate amounts I have accepted the figures of Prof. Johnson submitted when he was on the stand, and to that extent have made a classification of the items. Prof. Johnson selected certain items which he said included the purchase of new and additional equipment and real estate and aggregated them, the remainder of the footings for the years contained in the schedules of betterments would be betterments to existing property. I dislike to be understood as concurring in the items Prof. Johnson gave as expended in addition. There may be others included under betterments that should be transferred to additions. Upon this assumption my results stated by calendar years are:

Character expenditure.	Year.	Michigan Central.	Canada Southern.	System.	Percentage earned on stock over dividend and surplus.	
					M. C.	C. S.
Betterments .....	1898	\$296,240 12	\$87,776 63	.....	.....	.....
Additions .....	1898	39,827 26	13,958 62	.....	.....	.....
Total betterments charged to operating expenses.....	1898	\$336,067 38	\$101,735 25	\$437,802 63	1.8	.067
Betterments.....	1899	\$270,741 31	\$230,999 27	.....	.....	.....
Additions .....	1899	366,931 14	194,518 34	.....	.....	.....
Total betterments charged to operating expenses.....	1899	\$637,674 45	\$425,518 22	\$1,063,192 67	3.4	2.7
Betterments.....	1900	\$448,653 88	\$123,526 04	.....	.....	.....
Additions.....	1900	140,847 10	105,495 40	.....	.....	.....
Total betterments charged to operating expenses.....	1900	\$589,500 98	\$229,021 44	\$818,522 42	3	1.5
Betterments .....	1901	\$540,453 55	\$456,274 05	.....	.....	.....
Additions... ..	1901	321,590 07	89,734 34	.....	.....	.....
Total betterments charged to operating expenses.....	1901	\$862,043 62	\$545,008 39	\$1,409,052 01	4.5	4.6
Betterments.....	1902	\$519,308 57	\$383,264 88	.....	.....	.....
Additions.....	1902	416,151 13	140,718 41	.....	.....	.....
Total betterments charged to operating expenses.....	1902	\$934,459 70	\$523,983 29	\$1,459,442 99	5	3.5



The amounts added to the old property I give on the assumption that Prof. Johnson is correct in his division as to the amounts. I do not answer as to the correctness of that. I understand the general result to be that the schedule of betterments is an amount which was put into betterments after taking care of depreciation and renewals, which naturally come in the operating expense account. The report of the directors to the stockholders is substantially the same in so far as the aggregate results are concerned as those made to the public authorities. The percentages given would be earnings in addition to both the dividend and surplus reported, *i. e.* if the report showed that they had earned 6 per cent. this earning would be in addition to that 6 per cent.

Q. Mr. Simpson, a witness for the Pere Marquette, in his testimony of the amount expended in improving and adding to the physical assets of that road during the year 1900, and what in his judgment should have been expended to keep the equipment and the physical assets in as good condition as they were at the commencement of the year, referred to the report of the board of directors for that year, and says, that in arriving at the operating expenses of that year as shown by that report, no allowance was made for depreciation or the wear and tear of equipment and building; was that statement true?

A. It is not true as I understand railway accounts, because the classification of operating expenses followed by the Pere Marquette provides for depreciation. The object of a depreciation account is to collect a fund during the life of a given piece of property so that when it is worn out either the original cost or a new bit of property can be restored to the investor, and any adjustment of accounts or theory of expenditure by means of which that is done may be said to include in it a provision for depreciation.

The rule of charging to operating expenses followed by the Pere Marquette includes in operating expenses not only repairs of locomotives, bridges and other such property, but it provides for a replacement out of the current earnings when the property is worn out.

I read in illustration of what I have endeavored to explain, account 12, under maintenance of equipment which bears the heading "Repairs and renewals of locomotives" from the classification of operating expenses as prescribed by the Interstate Commerce Commission in connection with section 20 of the act to regulate commerce; this classification is followed on the Pere Marquette without serious modification.

1149½ "This account includes all expenditures for account of repairs, renewals and rebuilding of locomotives, tenders, snow-plows when attached to locomotives, furniture and loose and movable tools and supplies used in connection therewith. It also includes repairs of a pusher engine and tender belonging to another road over which trackage rights are granted. It also includes the cost of locomotives, tenders and appurtenances thereto belonging,

built or purchased to make good the original number of charges to construction or equipment, including royalty for patent, steam and other power brakes, and brake fixtures, less the value of old material, insurance or re-payments from other roads."

Then follows in fine print in the classification two pages of detailed statement of the items to be charged.

In the Interstate Commerce Commission classification there is a similar schedule for each class of equipment and for maintenance of way. It therefore follows that there is properly chargeable to operating expenses an amount designed to maintain the property, that the property does not depreciate and therefore no further depreciation can properly be allowed.

In each of the Pere Marquette reports 1900, 1901 and 1902 there is contained items for maintenance of equipment including renewals and repairs of locomotives, repairs and renewals of passenger cars, repairs and renewals of freight cars, repairs and renewals of work cars, repairs to roadway, rails, renewals of ties, repairs and renewals of bridges, culverts and fencing, and other items of maintenance and way of structures, with figures carried out and entered in the operating expense account against every sub-account, so that it appears that there had been such items which had been actually paid out for the purposes named.

The opinion of whether the amount actually paid out for repairs and renewals was sufficient to overcome the depreciation must rest upon either the experience in paying it out and including it in the account, or be theoretically based upon the experience of others as to what would be a normal depreciation.

I heard Mr. Simpson's testimony as to the method by which he took a percentage of the theoretical depreciation based upon the supposed life of various classes of equipment, and understood he adopted a theoretical depreciation upon what he assumed the life of the property in question to be.

1150 The Interstate Commerce Commission has compiled data for the roads of the United States from which the normal or typical expense of maintaining right-of way, structures and various classes of equipment against depreciation, including repairs, renewals and substitution, can be determined. The word "depreciation" does not occur in railway reports to the Interstate Commerce Commission, it is covered by the phrase "renewals and repairs" in the official classification. I know of no better source or guide for determining theoretically depreciation or cause of renewals than the Interstate Commerce Commission's statistics.

I have taken from the Interstate Commerce Commission's statistics the average cost of maintaining a locomotive in the United States covering both repairs and renewals, which is as follows:

1895...	\$1,150	1897...	\$1,240	1899...	\$1,450	1901...	\$1,573
1896...	1,283	1898...	1,354	1900...	1,650	1902...	1,963

The average for the years given is \$1480. The number of Pere Marquette locomotives in 1900 was 224 as given in the report to stockholders; the amount charged that year against repairs and renewals of locomotives was \$389,469 which gives the amount per locomotive of \$1738. Mr. Simpson states \$172500 should be added making a sum, which according to his testimony should have been charged in operating expenses against repairs and renewals of locomotives, of \$561,969 which would have been an expenditure per locomotive of \$2584. For the cost of maintaining passenger cars with repairs and renewals (the figures with reference to the Pere Marquette being taken from the reports to the stockholders) I find the following :

	1900	1901	1902	Average.
For United States, from statistics.....	\$598 00	\$631 00	\$644 00	\$626 00
Actual expenditure, Pere Marquette..	697 00	710 00	570 00	659 00
Pere Marquette, after adding additional amount claimed by Simpson..	1,425 00	.....	.....	1,425 00

1151 For the maintenance of freight cars (the Pere Marquette figures being from the same source) I find

	1900	1901	1902	Average.
For United States, from statistics...	\$51 90	\$50 00	\$53 20	\$51 70
Actual expenditure, Pere Marquette	48 20	35 00	36 00	39 70
Pere Marquette, after addition of amount claimed by Mr. Simpson...	85 00	.....	.....	85 00

I have made no comparison in other items and have not looked it over to see how it would come out. I compared the percentage of aggregate operating expenses under the headings "Maintenance of way and structures" and "Equipment" and the aggregate of operating expense for the Pere Marquette with the corresponding percentages with the railroads of the United States. The general result is that the maintenance of way and structures is slightly higher for the Pere Marquette than for the railroads of the country, and the maintenance of equipment a very slight percentage lower (locomotive and passenger cars being higher and freight cars lower). A comparison shows that the Pere Marquette accounts, so far as operating expenses are concerned, are about the same as the average railroad of the United States, and the additions proposed by Mr. Simpson would bring them far in excess.

I have considered the question of the propriety of the charges by the Pere Marquette to accounts other than operating expense stated

1152 by Mr. Simpson to be such as should have gone to operating expense; in his testimony he has not followed the customary rules of railways in adjusting accounts, *e. g.* he says the entire purchase price of a gravel pit should be charged to operating expense. It is not customary with railroads to charge the entire amount of a gravel pit to operating expenses, but to charge each year to operating expenses the amount of gravel used; principle being that operating expenses shall be made to bear the expense when it has been put into use; a contrary rule would result in charging to the current year property which might not be used for ten or fifteen years; this principle would apply to a great many other items, *e. g.* rails, new engines; amounts paid on equipment trust bonds ought not to go in operating expenses,

(a) for the same reason new locomotives should not;

(b) as a portion of payment is interest; to place this amount in operating expenses would be equivalent to charging interest on debt to operating expense, which no one would contemplate.

The \$210,000 expended by the Michigan Central for improvements in excess of those charged to operating expenses, for the year ending June 30, 1902, is in excess of the percentages given of amounts earned in addition to dividend and surplus.

#### Cross-examination by Mr. McPHERSON:

The Pere Marquette makes reports to the Interstate Commerce Commission in harmony with the prescribed forms and there is no evidence in the reports filed that they do not conform to the spirit of rules laid down.

If a railroad company charges to construction an item which should be charged to operating expense, it is by the form called to the commission's attention. The commission has never met with great success in securing a voluntary statement of roads generally of that portion of current cost or expenditure pertaining to improvements or betterments.

1153 I see no objection to the item in the construction account in the annual report of the Pere Marquette to the stockholders, 1902, for new equipment, (\$1,028,000), remaining there and increasing the cost of property; that is true, so far as a determination of the net earnings for the year is concerned, if the new takes the place of worn out equipment.

If the company bought a million dollars' worth of equipment, to take the place of equipment worn out, that should not be treated as an operating expense; if in years past the stockholders received dividends, that ought to have been used to keep up the equipment the stockholders ought now to bear that expense if necessary; from fact that the equipment was purchased to take the place of that worn out, must assume that the classification of operating expenses in the past has not been maintained; otherwise, no new equipment would be bought as a substitute for old; if an engine was permitted to drop

out and the stockholders received a dividend, they received it out of money which should have gone to maintain property.

Q. Suppose during ten years while the equipment is being worn out, there has been no charge to operating expenses for depreciation, is it proper to take operating expenses on that basis to determine net earnings?

A. I do not think that assumes a possible situation; it would mean that through years when no depreciation was allowed, nothing would be charged to operating expenses except repairs; operating expense covers renewals, as well as repairs and so provides for the maintenance of the property.

If a company purchases a million dollars' worth of equipment, and uses it ten years, charging only the cost of repairs to operating expense, and when it is worn out and it is compelled to buy a million dollars' worth to take its place, the new purchase is not chargeable to the operating expenses of a particular year; it is a frequent practice of roads, desirous of maintaining the integrity of income account year by year, to spread an expenditure which ought to be  
1154 borne by earnings over ten years in future by charging one-tenth to operating expense of each year; the object of the classification of operating expenses is to establish a sinking fund whereby is set aside earnings each year to provide for renewals.

The rules of the Interstate Commerce Commission make no provision for a sinking fund or a similar method of accounting to take care of new equipment, when purchased; new, taking place of old, equipment is included in the classification of operating expenses under the head of "renewals;" the interstate commerce forms (pp. 27 and 29) provide three places for charging equipment and permanent improvements, (a) included in operating expenses; (b) charged to income account as current improvements, which is exclusive of operating expenses, thus taking them out of earnings and (c) charged to construction or equipment, resulting in an increase of capital; the commission has not undertaken to decide on the financial policy of a corporation, but its form is adjusted to the conditions and practice of various roads; the roads are left to choose to what account they will charge different items; all that is required by the commission is a report of the amounts charged on the books, regardless of whether they are correctly charged on the net earnings theory or not.

I think the net earnings shown by a railroad's reports, where railroad charges such amounts as it chooses to operating expenses or permanent betterments, is a reliable basis for determining value for taxation, if I can investigate the items; I would wish to satisfy myself, before adopting the basis of valuation of what enters into value of property and what the practice of the road is; I have investigated the Pere Marquette and am satisfied that its reports on this point are correct, and that the net earnings shown by the reports to stockholders for 1901 and 1902, show actual net earnings upon which to safely base value for taxation.

Q. In 1901 the Pere Marquette purchased \$1,250,000, and in 1902 \$1,100,000 worth of new equipment, and during those years, only \$27,000 of that new equipment was charged to operating expense, do you think that amount would take care of depreciation on \$2,500,000 worth of equipment during those years?

A. In my opinion none of that should go to operating expense if the object is to find the net earnings of the current year; all is new equipment, and you have already, in those years, expended in operating expenses, the normal amount for repair and maintenance of equipment; the replacing of worn out, with new equipment will be taken care of through the item "renewal" in operating expense.

The classification of operating expenses, covering renewals is equivalent to a sinking fund, with results the same as though a sinking fund for each locomotive was established; the amount charged by the Pere Marquette to renewals covers the normal amount, the amount expended on its engines in 1900 being in excess of that expended by the roads of the country at large by \$150. I get the normal from the average in the reports to the Interstate Commerce Commission; it is commonly said, based on experience in operating offices that \$1,500 per year is the charge for renewing and maintaining a locomotive.

The cost and life are elements going into the annual cost of a locomotive, and they are reflected in the results given of average repairs and renewals, taken from the reports to the Interstate Commerce Commission; the Interstate Commerce Commission exercises no direct authority over what shall be charged to renewals, repairs or construction; the Pere Marquette has not deviated far from the universal rule, in charging to operating expenses and its figures conform closely to the typical figures for roads of the country. If Mr. Simpson testified that new equipment (Pere Marquette) to take the place of old, worn out, was not charged to operating expenses, I am not willing to adopt his statement; I should examine the company's books, before accepting it as true; have not been refused permission to examine the Pere Marquette's books.

My testimony is against the accuracy of Mr. Simpson's theoretical depreciation; I compare the amounts Mr. Simpson finds reported as renewals and repairs of locomotives in operating expense with the normal cost, from the Interstate Commerce Commission's reports, and find that for the year on which I testified that the Pere Marquette's cost is above normal; I add Mr. Simpson's additions for depreciation to it, and find that it brings an abnormal expenditure, and present it as a consideration against the accuracy of Mr. Simpson's theory.

I have examined these items for other roads; a person following these items year after year, gets impressions and normal measurements in his mind, which undoubtedly influence his opinion.

To get the average expended by the Pere Marquette for repairs

and renewals of locomotives and other equipment, I took the amount of equipment at close of the fiscal year.

I understand by equipment trust bonds, that the company pays for its equipment in annual installments; I have never examined these trust bonds of the Pere Marquette; generally the payment covers two items—a portion of the principal and interest.

In the application of strict accounting the principal should be charged to construction and the interest to interest account; if the road wishes to pay for new locomotives from current earnings, the entire amount would be charged to income account.

Q. Assume a railroad company just started in business, with no equipment; it purchases freight cars to be paid for in 15 annual installments, when cars will be worn out; to what account should annual installments be charged if the company desires to make net earnings, shown by its books actual net earnings for purpose of taxation?

A. The principal should be charged to construction and interest to interest account.

If the classification of operating expenses has been followed the road has, when cars are worn out, a fund with which to buy the same amount of equipment, taken from current earnings from year to year and charged through operating expenses. It would amount

to charging annual installments of cost of equipment to construction, and setting aside an equal amount out of operating expenses to buy new equipment. You would not obtain correct results by charging annual payment for equipment to operating expenses, as you would have no money at end of 15 years to again buy equipment.

Q. You would buy it the same as you did the last?

A. You can, if a company desires to adopt that policy.

Q. On the assumption that I made, the proper way to handle your annual payment is to charge it to operating expenses, isn't it?

A. I should say that was a very unusual method of procedure."

Q. The Pere Marquette purchased two million dollars of equipment on trust plan, on installments, it has not created a sinking fund to purchase new equipment, when this is worn out, what shall be done with the annual payments?

A. I think that a road which carries operating expenses at 70 per cent. and on examination shows it gives repairs and renewals equal to other roads, is taking care of its equipment; my answer is correct (on theory that testimony in relation to Pere Marquette method of handling equipment is false) or I do not properly interpret the accounts.

If a company desires not to have its capital cover its equipment, it might charge this to operating expenses, but it would never own its own equipment.

It should charge these annual payments to operating expenses or should cover renewals and repairs by sinking fund; have reason to believe Pere Marquette has the equivalent of a fund to care for its



equipment when worn out, when its auditor says it follows Interstate Commerce Commission's classification of operating expenses.

If Pere Marquette has more than doubled its equipment within the last three years the depreciation is taken care of in account 12 of classification of operating expenses, under renewals under rule providing that out of current earnings road may take care of repairs and renewals; the classification establishes the equivalent of a sinking fund for each and every species of property and the result will be identically the same at the end of 20 or 50 years, so far as maintenance of the property is concerned, if this classification is followed, as it would be if you had a sinking fund for every engine.

The rule is true for the three years when the equipment was doubled, except that upon the new equipment, there would be fewer repairs, than on that used for a longer period and no renewals for a series of years; therefore the percentage of renewals might vary from normal; of absolutely new equipment, there would be less to come out of operating expenses for renewals and repairs than after it began to wear out; influence of new equipment on operating expenses can be measured only when we take new equipment in connection with old.

That 50 per cent. of equipment was new would have an influence on the average expenditure and decrease it; if the Pere Marquette books are correct, according to the theory of the Interstate Commerce Commission, and one-half of its equipment has been practically new and additional, there would be a slight deviation from normal in operating expense; the ratio of repairs and renewals to the total operating expense is about 7 to 7.5 per cent., and this situation would affect that portion. The valuation in this case has not been made by any rule, every road is taken by itself; its accounts are studied and if the situation indicates any deviation or modification, in application of my method it is adopted; by study of conditions,—I have determined the rate of capitalization.

#### Cross-examination by Mr. BUTTERFIELD:

The application of my theory of valuation does not add to net earnings, the items contained in betterments statement of the Michigan Central (Exs. 2 and 3, May 23, 1904, Record pp. 4730 to 4843); I think they should be added to determine the true earnings of the property; whether they should be added to determine the value of the property, depends on how the charge to operating expense of so large an amount of improvements is allowed to influence application of the method as affecting rate; quite likely the public estimate of the Michigan Central property would be different if it had not been improved out of net earnings; it is desirable in application of my theory to know the property's true net earnings; in D. S. S. & A. raised the earnings beyond those stated.

In assessing property, it is desired to get true cash value relatively as well as actually, and it is not possible to ignore different conditions of accounts of different roads; the tendency of covering into operating expenses certain improvements, is growing and is known to purchasers of railway property, that being so, something of an adjustment must take place in the mind of the appraiser, before he decides on capitalization rates; where there is net corporate surplus above the annuity, my theory amounts to a capitalization of net earnings; where I found the report creditable and gave what I would concede to be a true statement of net earnings, that was adopted.

The rate of capitalization on Michigan Central was not a matter of individual judgment, but was the rate which purchasers of Michigan Central (and that class) of securities indicated to be proper by the price offered.

If I said I reduced the rate from what a study of market would show, on account of the policy of the Michigan Central charging permanent improvements to operating expenses, it was by inadvertence; the market rate would have been higher if the Michigan Central had not been so prosperous as to enable it to put a million and a half into improvements out of earnings, that was one explanation of the low rate.

I kept to the market rate; it being governed by the market quotations. The importance of knowing how much had been charged to operating expenses, that should have been capitalized comes in when I endeavor to explain to myself the unusually low rate on this class of securities.

1160 The question was to what extent these low rates were fictitious and my study in detail of the Michigan Central accounts was to satisfy myself that the market quotations might judiciously and properly be accepted; there were two ways to recognize the policy of the Michigan Central in paying for permanent improvements out of operating expenses, either to allow the corporation smaller annuity or to capitalize the improvements.

My reason for taking average quotations for the year ending August 15, 1902 for all roads, is that in valuing a series of railroads as of a certain date, it seems to me that the same conditions, so far as they exist, should pertain to every railroad.

— In saying (on previous examination.)

"But the reason of the fact that you believed that in the operating expenses of the Michigan Central railroad, there are items which in fact paid for permanent improvements, you have allowed the corporation a smaller annuity upon its physical valuation than would otherwise have been the case?"

A. Yes, sir, it was either that or to capitalize the improvements."

I meant that in studying the conditions on the Michigan Central property, my attention was called to large amounts of permanent improvements charged to operating expenses; there were two ways of reflecting that in the valuation, I might have excluded the im-

improvements from operating expenses and added them to the net earnings.

I did not know the amount for 5 years, though might have found it out. Every person who values a property is obliged to rest his judgment on all information that has any bearing.

I think it is true that I allowed the Michigan Central a smaller annuity on account of improvements charged to operating expenses, as a different situation would have influenced the public mind differently, and there would have been different prices paid for securities. If I said (on previous examination) that charges of

1161 permanent improvements to operating expenses operated to reduce the rate of capitalization, I would like to revise thus : Among things which explained the low market rate and justified my acceptance of its was the fact of permanent improvements paid out of operating expenses.

My study of the book-keeping of the company tended to corroborate the market reports; my line of reasoning is the Michigan Central has earned 9 to 12 per cent. on its capital, the stockholders are obliged to content themselves with 4 per cent., the difference goes into surplus and improvements; a different policy would have made a different rate and changed commercial conditions so the rate would have been modified; I probably said on previous examination that in the direct capitalization method, it would be necessary to normalize the net earnings of the Michigan Central before capitalization would be permitted.

You might accomplish the same result by reducing the rate. To find the normal net earnings I must have access to the details of operating expense account; the study of improvements was a study of general accounts and the operations of the road, as to whether the rate was reasonable; I did not intend to justify statement that there is a mathematical ratio between improvements and the rate of capitalization.

That bookkeeping had charged improvements to operating expenses, did not reduce rate below (it is not below) the stock market; in Michigan Central, I was not influenced by its bookkeeping; I would not care to leave the impression that if a study of market quotations appeared to me to give proper rate, I would not extend my investigation into the accounts; would not be willing to rest so important a question on any one thing; in the case of the Michigan Central I examined the market quotations, found the rate, investors were willing to receive as a net return on investment, relatively low and in looking for an explanation found about a million dollars a year had been spent for permanent improvements and charged to operating expenses, and was satisfied that this was an explanation of what I otherwise thought a low rate.

1162 After being convinced that market quotations were not abnormal but warranted by something done by the corporation the improvements charged to operating expenses were not further taken into formal consideration or made use of.

A million and a half dollars capitalized at 5 per cent., is \$30,000,000; a question presented was whether it was equity to capitalize the improvements to and increase value of Michigan Central by thirty millions; stock market quotations are influenced by the Michigan Central policy; after study, my judgment was that the value of the property should not be raised to the extent of capitalization of the value of the permanent improvements, and if there were to be any capitalization, the improvements should be capitalized according to kinds and sources; I came to the conclusion that equity would be attained by passing over improvements and using them wholly to explain low interest rate.

I made no further use of permanent improvements charged to operation, hence the value of the property is not adequately represented in my appraisal—in my opinion, I have it too low. Did not capitalize these improvements because I reached such an immense amount.

To the extent explained I was influenced in the rate of capitalization and specific factors of theory, by the result it was going to produce. The question of charging permanent improvements is bigger than the question of taxation, and the general policy of accounting and the effect of the method of taking out of current earnings a certain portion for improvements and betterments and public interests involved in that influenced me. I could not divest myself of the entire situation and I think you are right in saying I backed out from the extreme application of the principle laid down.

Had I discovered that the Michigan Central had not charged permanent improvements to operating expenses, I would not have raised the rate shown by market reports, am confident however, that the market quotations would have been higher.

If a million and a half of dollars had gone to the payment of dividends, I think the stock would have gone to \$250 or \$300. I did not know the average permanent improvements charged to operation for 5 years; had that become important, would have been obliged to curtail 5 to 3 year period.

To the extent to which charging of permanent improvements to operation might influence the estimate of purchasers the rate would be modified if I added to net earnings shown by company the full amount of average charged to operation, which should have been charged to permanent improvements; but I should make no formal modification of the rate.

If charging of permanent improvements (and extent) to operating expenses were unknown to the investor and in application of theory, I normalized net earnings, I should modify the rate of capitalization very slightly, if at all. I think the addition of that amount of earnings would require slight modification in the rate to equalize Michigan Central with other railway property.

The increase in the amount to be capitalized by this process would have influenced the market quotations to some extent and would justify a slight rise in rate; I agree with Prof. Johnson that, as a

principle it would be proper to use a higher rate for annuity and capitalization; the question of amount is entirely a different matter,—a matter of judgment. I have not normalized the Michigan Central earnings and figured the property's value on that basis.

Q. Let me see the document you read into the record this morning giving your reasons why the tax rate should not be added to the rate of capitalization?

Mr. KNAPPEN: That was given in a communication to me, it is really my communication and I don't know how literally he read from it; it was prepared by him entirely and it is not a document that anybody else could read.

1164 Mr. BUTTERFIELD:

Q. You decline to permit me to see it?

A. I am willing you should take it from the point where I commenced to read.

I said there was no evidence, that act 173 had impressed itself upon the value of Michigan railway property.

Do not wish to be understood as distinguishing between value for taxation and for other purposes, (unless problem involves one of relative value) there was no importance in Mr. Knappen's question or my answer, of words "for purpose of taxation."

The object throughout has been to obtain the true cash value and I have not distinguished between capitalization for purposes of taxation or any other purpose; if not proper to add the tax rate for current year to reach value for purpose of taxation, it would not be proper in any case where value was sought.

I can see how the problem of reaching the value of property would call for one method at one, and another at another time.

The purpose for which it was asked might make a difference; in 1900 I did not get the entire value; it was the object of the investigation to get near enough for instruction to the legislature in determining a certain question; have now been endeavoring to get the value of property for 1902 as an assessor would.

In 1900 we were called upon to value the property to enable a comparison; the problem did not require the careful attention which would be expected of one who values for assessment purpose.

My letter of transmittal in 1900 stated purpose of the valuation to be that of comparison; comparison assumed that general properties were assessed at 65 per cent. of their true cash value; I then made a computation which would equalize returns and enable the legislature to make a comparison.

Q. Then that answer involved did it not, the report by you of the true cash value?

Mr. KNAPPEN: I object to this inquiry first, because it is not proper cross examination on anything testified today, and second, because it has been gone over previously in the record.

1165 A. I don't know that it necessarily involved a statement of the property's value; I made no statement that the figures were less than true value of property.

In my letter, there was a statement which would suggest that the degree of accuracy required of an assessor was not followed; that was in regard to the rate, my value was arrived at on the basis of these rates; the question whether it was correct depended on whether tax commission agreed with the rate adopted, the increase of tax rate, and on whether I had adopted a proper rate for taxation in taking 1 per cent. I understood that to be an addition which would secure a figure equalizing the value of railroad with other property.

In adding the tax rate in 1900 I did exactly what I now condemn in the computation of Prof. Johnson.

1166 M. E. COOLIDGE, for defendant:

I have prepared a table, showing the proportion of the operating expenses, betterments and taxes to total earnings of the Michigan Central.

(Under objection of incompetent, irrelevant and not proper rebuttal.)

Taking the earnings and operating expenses from 1893 to 1902, from the reports of the company to the railroad commissioner, and betterments, from the schedule submitted to Prof. Johnson.

The data in columns 12, 13 and 14 of the table are from reports of the statistician of the Interstate Commerce Commission; 13 and 14 being averages. Group III of railroads embraces those roads in the Lower peninsula of Michigan, Ohio, Indiana, and north west portion of Pennsylvania.

The figures in columns 2, 3, 5, and 6 of the table are taken from the reports to the railroad commission, (those in column 6, with corrections); column 4, from the schedule of betterments; column 7 is a ratio of quantities in column 4 divided by those in column 2; column 8 is difference between the quantities in columns 6 and 7.

In column 9, the ratio of figures in column 5 divided by those in column 2; the figures in columns 10 and 11 are taken from figures in the other columns, (table offered in evidence, under objection of incompetent, irrelevant and not proper rebuttal. Exhibit 76, July 29, 1904. It is as follows:

## Michigan Central Railroad Company.

Showing Proportion of Operating Expenses, Betterments, and Taxes to Total Earnings, July 9, 1904.

1.—Year ending December 31.	2.—Total earnings from operation.	3.—Total operating expenses, including taxes.	4.—Betterments charged to operating expenses.	5.—Taxes paid.	6.—Ratio operating expenses to earnings. Per cent.	7.—Betterments. Per cent.	8.—Operating expenses less betterments. Per cent.	9.—Taxes. Per cent.	10.—(Operating expenses less betterments and taxes. Per cent.	11.—Operating expenses less taxes. Per cent.	12.—M. C. Group III. Per cent.	13.—United States. Per cent.	Proportion of operating expenses to operating earnings, as shown by Interstate Commerce reports.
1893.....	\$16,178,030 99	\$12,287,792 35	\$1,285,152 55	\$340,875 12	75.95	7.95	68.00	2.11	65.89	73.84	74.76	71.84	67.82
1894.....	12,584,013 28	9,144,107 97	170,782 57	340,444 42	72.66	1.36	71.30	2.71	68.59	69.96	72.36	73.04	68.14
1895.....	13,651,420 61	10,183,231 31	320,749 15	302,498 89	74.59	2.36	72.23	2.22	70.01	72.37	70.03	70.84	67.48
1896.....	13,821,614 44	10,392,349 90	474,719 53	326,452 99	75.18	3.43	71.75	2.36	69.39	72.82	72.21	71.39	67.20
1897.....	13,697,239 31	10,249,510 32	351,430 65	330,316 71	74.83	2.56	72.27	2.41	69.86	72.42	72.26	71.29	67.06
1898.....	14,046,000 41	10,545,972 18	437,802 63	408,098 68	75.08	3.12	71.96	2.31	69.65	72.77	72.99	71.18	65.58
1899.....	15,508,582 22	12,004,116 71	1,063,192 67	426,693 02	77.40	6.85	70.55	2.75	67.80	74.65	72.47	70.53	65.24
1900.....	16,735,055 60	13,229,490 35	818,522 42	467,205 77	79.05	4.89	74.16	2.79	71.37	76.26	76.12	69.22	64.65
1901.....	18,490,273 65	14,745,963 96	1,407,052 01	508,132 90	79.75	7.61	72.14	2.75	69.39	77.00	76.85	69.47	64.86
1902.....	19,045,083 50	15,467,504 55	1,459,442 99	549,062 33	81.22	7.66	73.56	2.88	70.68	78.34	76.93	69.49	64.66



Prepared a table from the reports of the Lake Shore & Michigan Southern to the railroad commissioner, comparing its earnings with its operating expenses.

I have also given the proportion of the Michigan mileage to the mileage of the system, the figures being taken from reports of Lake Shore to railroad commissioner and State board of assessors; the figures from the different sources differ only in classification of track, i. e. those from the report to the State board of assessors eliminating branches and spurs.

The figures are correctly taken from the reports, and the computations correctly made. (Table offered in evidence, Exhibit 77, July 29, 1904, under objection of incompetent, irrelevant and not proper rebuttal.)

1. Year.	2. Reported income from earnings, entire system.	3. Reported income from other sources, entire system.	4. Income from earnings assigned to Michigan.	5. Reported total operating expenses, entire system.	6. Ratio of net earnings—Michigan to entire system. Col. 9, col. 8.	7. Ratio of per cent. of operating expenses—Michigan to entire system. Col. 11, Col. 10.
1898.....	\$25,657,327 30	\$346,859 85	\$21,044,137 15	\$2,019,002 35	13. 3.76	14. 1.39
1899.....	25,381,242 92	376,051 75	23,757,294 67	2,199,002 35	13. 3.36	14. 1.38
1900.....	27,004,809 09	749,520 76	27,754,329 85	2,379,704 61	13. 5.31	14. 1.17
1901.....	25,789,445 61	1,229,289 09	31,115,735 30	2,321,199 99	13. 7.62	14. 1.38
1902.....	30,954,832 32	1,608,264 56	32,523,416 86	2,605,027 16	13. 2.74	14. 1.26
Average.....	\$26,364,935 45	\$694,067 32	\$27,559,002 77	\$2,314,931 41	13. 3.47	14. 1.27

The report to the comm. of railroads, 1902, gives the total mileage operated..... 1,411.16 } Percentage in Mich. equals 38.2  
And mileage operated in Michigan..... 539.52 }  
The report to State board of assessors, 1902, gives total mileage operated as— 1,411.36 }  
Single track..... 3,609 }  
Branches and spurs..... 1,090.67 }  
Total main track..... 539.52 } Percentage in Mich. equals 42.9  
Total mileage operated in Michigan..... 71.61 }  
Branches and spurs..... 467.91 }

1 Record \$209 to \$313, testimony Cooley, refer to physical value railroad properties, found volume II, this abstract.

1168 I have no personal knowledge of the facts on which the Interstate Commerce Commission's statistics are based, or whether the accounts are properly kept.

Redirect examination.

The Interstate Commerce Commission's reports and statistics are standard publications, recognized as authority on the subjects covered.

(Objection of incompetent.)

1169 T. H. HINCHMAN, recalled for the defendant.

I have prepared tables from the Interstate Commerce Commission's statistics, showing repairs and renewals of locomotives, passenger and freight cars, and from the Michigan Central's reports to railroad commissioner, repairs and renewals of locomotives, passenger and freight cars.

(Subject to objection incompetent, irrelevant and not proper rebuttal.)

The Interstate Commerce Commission's statistics give summary of operating expenses, in which there are items of repairs and renewals of locomotives, passenger cars and freight cars, also the total numbers of locomotives, passenger and freight cars of the reporting roads of the United States.

By dividing the amount stated for repairs and renewals of any class of equipment by the amount of equipment, we obtain the cost per single item, the data of the Michigan Central in its report to the railroad commissioner has been abstracted in the same manner.

The computations made are correct to the last figure; the work of division being done by a slide rule; the data is in the table to check computation.

The results on Michigan Central locomotives were figured mathematically. (Tables offered in evidence, subject to objection incompetent, irrelevant and not proper rebuttal. Exhibits 78, 79, July 29, 1904.)

They are as follows:

Table showing repairs and renewals of locomotives, passenger cars and freight cars in the United States, abstracted from summary showing classification of operating expenses for years ending June 30, 1895, '6, '7, '8, '9, 1900, '1, '2, and also the number of locomotives, passenger cars and freight cars in the United States, abstracted from the summary of equipment found in the statistics of railways in the United States, published by the Interstate Commerce Commission. From these data the repairs and renewals per locomotive and per car is shown for the several years for all the equipment in the United States covered by the table.

## Locomotives.

Year.	Number.	Total repairs and renewals.	Repairs and renewals per locomotive.
1902.....	41,225	\$80,743,067 00	\$1,960 00
1901.....	39,584	66,253,484 00	1,675 00
1900.....	37,663	62,156,551 00	1,650 00
1899.....	36,703	50,552,264 00	1,378 00
1898.....	36,234	45,119,953 00	1,244 00
1897.....	35,986	39,214,355 00	1,091 00
1896.....	35,950	43,150,823 00	1,200 00
1895.....	35,699	38,218,439 00	1,071 00
Average.....			\$1,409 00

## Passenger Cars.

Year.	Number.	Total repairs and renewals.	Repairs and renewals per car.
1902.....	36,987	\$24,029,894 00	\$650 00
1901.....	35,969	22,532,985 00	627 00
1900.....	34,713	20,872,659 00	602 00
1899.....	33,850	17,623,124 00	520 00
1898.....	33,595	16,760,825 00	498 00
1897.....	33,626	15,683,740 00	467 00
1896.....	33,003	15,990,268 00	484 00
1895.....	33,112	14,927,860 00	451 00
Average.....			\$538 00

## Freight Cars.

Year.	Number.	Total repairs and renewals.	Repairs and renewals per car.
1902.....	1,546,101	\$82,812,888 00	\$53 60
1901.....	1,464,328	73,595,935 00	50 20
1900.....	1,365,531	70,989,353 00	52 00
1899.....	1,295,510	57,320,521 00	44 20
1898.....	1,248,826	55,248,327 00	44 30
1897.....	1,221,730	44,165,087 00	36 20
1896.....	1,221,887	51,910,309 00	42 50
1895.....	1,196,119	40,561,700 00	33 90
Average.....			\$44 60

1171 Table of Repairs and Renewals of Locomotives from Reports of Michigan Central Railroad to the Commissioner of Railroads.

Year.	Number.	Total repairs and renewals.	Repairs and renewals per locomotive.
1902.....	461	\$939,459 00	\$2,038 00
1901.....	461	1,364,611 00	2,960 00
1900.....	461	1,016,337 00	2,205 00
1899.....	461	581,738 00	1,262 00
1898.....	461	476,458 00	1,034 00
1897.....	461	440,237 00	955 00
1896.....	461	484,084 00	1,050 00
1895.....	461	378,515 00	821 00
Average .....			\$1,541 00

Table of Repairs and Renewals of Passenger Cars from Reports of M. C. R. R. Co. to the Commissioner of Railroads.

Year.	Number.	Total repairs and renewals.	Repairs and renewals per car.
1902.....	390	\$197,619 00	\$507 00
1901.....	386	250,552 00	650 00
1900.....	386	233,580 00	604 00
1899.....	373	161,982 00	432 00
1898.....	373	168,558 00	452 00
1897.....	372	157,416 00	424 00
1896.....	372	208,939 00	563 00
1895.....	369	190,793 00	517 00
Average .....			\$518 00

Table of Repairs and Renewals of Freight Cars from Reports of M. C. R. R. to the Commissioner of Railroads.

Year.	Number.	Total repairs and renewals.	Repairs and renewals per car.
1902.....	13,544	\$966,478 00	\$71 30
1901.....	14,123	919,699 00	65 00
1900.....	14,174	946,324 00	66 80
1899.....	14,134	1,223,958 00	86 40
1898.....	13,278	713,558 00	53 70
1897.....	13,103	674,520 00	51 85
1896.....	13,024	688,720 00	52 90
1895.....	12,841	648,396 00	50 50
Average .....			\$62 30

## Cross-examination—Mr. BUTTERFIELD :

I do not know whether railroad companies included in the account for repairs of locomotives and other equipment all items the Interstate Commerce Commission recommended.

1172 JAMES WALKER, recalled for defendant.

I compiled the volumes marked "Railroads of Michigan, Compilation of Statistics from Poor's Manual of Railroads, 1890-1901" and "Michigan Railroads, Compilation from Interstate Commerce Reports, 1890-1902, March, 1904;" (Exs. 2 and 3, April 5, 1904) the computation was accurately made from the sources indicated on the respective volumes and represent results correctly.

(Mr. BUTTERFIELD : We renew our objections to these books.)

The book marked "Railroads of Michigan, Compilation of Operating and Traffic Statistics," (Ex. 4, April 5, 1904) was compiled by Mr. Thompson, at my request. I have used a majority of the figures in the book, and in using, compared those used, and found them correct.

1173 W. M. THOMPSON, recalled for defendant.

I prepared the portion of volume "Railroads of Michigan, Compilation of Operation and Traffic Statistics," (Ex. 4, April 5, 1904) relating to Operating statistics of the Michigan Central and Pere Marquette. The entire compilation was prepared under my supervision, and the figures were compared back and verified by myself and other clerks. In using it, I have made personal verification, and have found it correct.

1174 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

## Michigan Railroad Tax Cases.

PERE MARQUETTE RAILROAD Co., Complainant,

vs.

PERRY F. POWERS, Auditor General, Defendant.

DETROIT & MACKINAC RAILROAD Co., Complainant,

vs.

PERRY F. POWERS, Auditor General, Defendant.

CHICAGO & NORTHWESTERN RAILWAY Co., Complainant,

vs.

PERRY F. POWERS, Auditor General, Defendant.

TOLEDO, SAGINAW & MUSKEGON RAILWAY Co., Complainant,

vs.

PERRY F. POWERS, Auditor General, Defendant.

- MICHIGAN AIR LINE RAILWAY Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- GRAND TRUNK WESTERN RAILWAY Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- MICHIGAN CENTRAL RAILROAD Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- 1175 ANN ARBOR RAILROAD Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- CINCINNATI, SAGINAW & MACKINAW RAILROAD Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- CHICAGO, DETROIT AND CANADA GRAND TRUNK JUNCTION RAIL-  
road Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- MUNISING RAILWAY Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- LAKE SUPERIOR & ISHPEMING RAILWAY COMPANY, Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- MARQUETTE & SOUTHEASTERN RAILWAY Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- CHICAGO, MILWAUKEE & ST. PAUL RAILWAY Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- MINERAL RANGE RAILROAD Co., Complainant,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }
- PONTIAC, OXFORD & NORTHERN RAILROAD Co.,  
vs.  
PERRY F. POWERS, Auditor General, Defendant. }



1176	MINNEAPOLIS, ST. PAUL & SAULT, STE. MARIE RAILWAY Co., Complainant,	}
	vs. PERRY F. POWERS, Auditor General, Defendant.	
	COPPER RANGE RAILROAD Co., Complainant,	}
	vs. PERRY F. POWERS, Auditor General, Defendant.	
	GOGEBIC & MONTREAL RIVER RAILROAD Co., Complainant,	}
	vs. PERRY F. POWERS, Auditor General, Defendant.	
	MANISTEE & NORTHEASTERN RAILROAD Co., Complainant,	}
	vs. PERRY P. POWERS, Auditor General, Defendant.	
	ESCANABA & LAKE SUPERIOR RAILROAD Co., Complainant,	}
	vs. PERRY F. POWERS, Auditor General, Defendant.	
	GRAND RAPIDS & INDIANA RAILWAY Co., Complainant,	}
	vs. PERRY F. POWERS, Auditor General, Defendant.	
	WISCONSIN & MICHIGAN RAILWAY Co., Complainant,	}
	vs. PERRY F. POWERS, Auditor General, Defendant.	

Until the legislation complained of in these cases, railroad corporations, express companies, car loaning companies, etc., were taxed in the State of Michigan specifically upon their gross earnings. For the purpose of enabling the legislature to pass an act for their taxation by an ad valorem system of assessment, placing their property, for that purpose, upon the same basis with that of other corporations and individuals throughout the State, the constitution was

1177 amended in 1900. The amendment permitted the legislature to provide for the assessment of the property of corporations at its true cash value by a State board of assessors, and provided for an uniform rule of taxation for such property, and that the rate of taxation on such property should be the rate which the State board of assessors should ascertain and determine as the average rate levied upon other property on which ad valorem taxes are assessed for State, township, county, school and municipal purposes.

At the next session of the legislature, in 1901, act No. 173 was passed, which is entitled, "An act to provide for the assessment of the property of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies ;

and for the levying of taxes thereon by the State board of assessors, and for the collection of such taxes:" under the provisions of which act the companies affected were required to make reports to the State board of assessors, which board was required to prepare an assessment roll and assess the property of such corporations, the property of the several corporations being described thereon by a general statutory description, which in the case of the railroad companies was required to be "real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business, and subject to taxation by the State board of assessors."

In determining the true cash value of the property of the railroad companies it is provided that the board should be guided by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies, both within and without the State.

After the completion of such roll the board of assessors is required to meet at the State capitol at Lansing on the third Monday of December of each year, and continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing their assessment; and any company or persons interested shall have the right to appear during such period and be heard as to the valuation of the property of any such company, and the State board of assessors on such application, or on its own motion, is given authority to correct the assessment or valuation of the property of such company, in such manner as will, in its judgment, make the valuation thereof just and equal. It is made the duty of the clerk of the board of supervisors in each county in the State, not later than the first day of November in each year, to report to said board the equalization made by the board of supervisors of the assessment rolls of the several townships therein, which report shall contain a statement of the amount of ad valorem taxes to be raised in the several municipalities in such county for State, county, township, municipal, school and other purposes, and a statement of the correct valuation of the property in each of said municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It is made the duty of the supervisor, or other assessing officer of cities and villages, governed by special charters which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purpose of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make within said time a report to said board of all ad valorem taxes, raised in any of such municipalities, which have not been reported to the State board of assessors for the purpose of equalization and review. The act further provides, in section twelve, that after the receipt of such report, and not later than the fifteenth day of December in each year, the State board of assessors shall ascertain and determine the

average rate of taxation of the then current year, levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes, and shall enter the same upon its record forthwith, together with the method by which such average rate was ascertained and determined.

The board is required to tax the property of the several companies as assessed by it, at the rate as determined, and the amount of the taxes is to be extended, upon the assessment roll, opposite the description of the respective companies' properties. The taxes so extended are made a debt owing from the companies, and become a lien upon all of the property, real, personal and mixed, of said companies from the time of extension until payment, which lien may be enforced by seizure and sale of the property, or so much thereof as is necessary to satisfy the same.

The board is required to annex to its roll its warrant, commanding the auditor general to collect said sums, which warrant is authority, in case of the neglect or refusal of any company to pay its tax, for levying on the same by distress, and sale of the property of the corporation.

All taxes collected under the act are to be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State debt in the order recited, until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund.

The State board of assessors proceeded under the act for the collection of the taxes for the year 1902, assessing the property of the companies at what they believed to be its true cash value. Acting under the provisions of section twelve of the act, to ascertain and determine the average rate of taxation for the year 1902 levied upon other property upon which ad valorem taxes were assessed for State, county, township, school and municipal purposes, they believed it to be their duty to determine whether such other property had been assessed at its true cash value, and proceeded accordingly and did ascertain and determine that such property had not been assessed by the assessors thereof at its true cash value, but that it had been assessed at a sum greatly less than its true cash value, and determined the true cash value of such property to be the sum of \$1,715,000,000, making thereby the amount of the assessed valuation of said property as determined by them greater than the amount of

valuation as assessed by the local assessors, as shown by the reports made to said board by the clerks of the boards of supervisors, and by such determination the board ascertained and determined the rate of taxation to be levied upon the properties of said companies to be \$13.68905 per thousand dollars of the assessed valuation thereof, and levied said rate of taxation upon the property of said companies. The tax roll made upon that basis, with the proper warrant of the board, was delivered to the auditor general for collection.

Thereupon application was made to the supreme court of the State, by the board of education of the city of Detroit, for a writ of mandamus to said State board of assessors, to require them to re-determine the rate of taxation to be levied upon the property of said companies, by taking for such determination, the assessed value of the other property as the same had been made by the local assessors. The supreme court granted the writ of mandamus, holding that under the provisions of said act 173, the State board of assessors had no authority to thus equalize the assessment of said other property, and that their duty in determining the rate of taxation to be levied upon the property of said companies was to take the valuation of said other property at the assessment made thereof by the local assessors. *Board of Education vs. State Board of Assessors*, 133 Mich., 116.

Acting under the direction of the supreme court, the State board of assessors re-determined the rate of taxation levied upon said other property for State, county, township, school and municipal purposes on the basis of the said assessment of said property made by the local assessors, and thereby made the rate of taxation to be levied upon the property of said companies \$16.55329 per thousand dollars upon the said assessed valuation thereof. For such tax a new assessment roll was made by said board, with its proper warrant annexed thereto for the collection of said tax, and delivered to the auditor general.

To stay the collection of those taxes these suits are brought, in which complainants allege that the general properties of the State other than railroad property, upon which taxes were assessed 1181 for State, county, township, school and municipal purposes, were assessed at less than the true and actual cash value and at about eighty-two per cent. thereof; that unincorporated persons, associations, partnerships and joint stock associations possess and operate railroads in Michigan and own property similar in character and engaged in the same business and owned under the same circumstances as the railroad property of the complainants; that railroad companies, among whom were some of the complainants, operate sleeping cars, and that sleeping cars were also operated by corporations or institutions independent of railroads; that interurban and street railways and their property are engaged in the same business as complainants.

The defendant filed answers to the bills of complaint which deny all statements setting up the unconstitutionality and invalidity of the constitutional amendments and act 173 of 1901 and the system of taxation invoked thereby, and in addition set forth in denial of allegations of the bills, that the general properties of the State, upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes, were not assessed at less than their true and actual cash value, but were, for 1902, presumptively, conclusively and actually assessed at their true and actual cash value, and further setting forth that the properties of the complainant companies, as assessed by the State board of assessors, pursuant to act 173 for the year 1902, were assessed at much less than the true and

actual cash value thereof. The answers also denied the allegations of the bills in regard to sleeping car companies, and interurban and street railway companies, and as to railroad and similar property to that owned and operated by complainants, being owned by unincorporated persons or institutions not subject to taxation under act 173.

The objections interposed by the complainants to the system of taxation of railroads invoked by the constitution and statute, as stated in their bills of complaint, are that it violates:

(a.) The 14th amendment to the Federal Constitution, in that:

1182 (1.) The selection of the corporation subject to taxation by a State board of assessors by said act, is arbitrary, not based on material and inherent differences in the corporations taxed or their property from other corporations and property, and does not constitute proper classification for purposes of taxation.

(2.) While individuals and corporations generally are entitled under the general laws of the State to have their *bona fide* debts deducted from their credits, no such provision exists and no such deduction is allowed in the case of complainants.

(3.) A higher rate of taxation is imposed on the property of complainants than upon the property of other corporations and persons claimed to be similarly situated.

(4.) The rate of taxation to which complainants are subject is dependent on the action of local officers, over whom complainants have no control, before whom they cannot be heard, and whose action they have no right to have reviewed in the courts, or otherwise.

(5.) The rate is fixed without legislative judgment as to the need of the funds benefited, by the tax, in any year.

(6.) The act operates to impose a tax upon the property of complainants situate in other States.

(7.) No opportunity is given complainants for a hearing upon the determination of the State board of assessors in fixing the average rate.

(8.) By neglecting to provide for equalization of the property of corporations taxed under act 173 with other property of the State, the 14th amendment of the Federal Constitution is violated, and equal protection of the laws denied.

(9.) As complainants had no notice of, or opportunity to be heard upon, the re-determination of the average rate, in the preparation of the duplicate assessment roll and the spreading of the tax thereon, due process of law was denied.

(10.) The constitutional provision and statute deprive complainants of their property without due process of law.

(11.) In requiring other tax laws to state distinctly the tax and its object, and not making a similar requirement as to acts  
1183 providing for the taxation of corporations by a State board of assessors, discrimination results.

(12.) In that every other law which imposes a tax on property in

the State of other corporations, companies, associations and persons, is required to state distinctly such tax and its object, while act 173 does not state distinctly the tax it imposes.

(13.) By reason of the fact that the other property of the State, subject to ad valorem assessment for taxation for State, county, township, school and municipal purposes, the average rate imposed upon which throughout the State is determined by the State board of assessors by mathematical computation by dividing the aggregate amount of taxes levied and raised for the purposes enumerated by the aggregate assessed valuation of such other property, at which average rate taxes are levied upon the assessed value of the property of complainants as fixed by the State board of assessors, is not assessed at its true and actual cash value, but at only about eighty-two per cent. thereof, while the property of complainants is assessed at its true and actual cash value, a discrimination results against complainants.

(b.) That it violates section eight of article I of the United States Constitution in attempting to regulate commerce among the several States.

(c.) That it violates section four of article IV of the United States Constitution, guaranteeing to every State a republican form of government.

(d.) That act 173 violates sections ten and eleven of article XIV of the Michigan constitution :

(1.) In that the selection of the corporations subjected to taxation by a State board of assessors by said act is arbitrary, is not based on material and inherent differences in the corporations taxed or their property from other corporations and property, and does not constitute proper classification for purposes of taxation.

(2.) In not giving complainants a hearing on the question of the rate of taxation to be imposed upon their property.

1184 (3.) In including within its provisions the property of the corporations named in the act, to the exclusion of all other corporations in the State.

(4.) In not providing a rule of taxation uniform, except on property paying specific taxes, by not permitting the deduction of complainants' debts from their credits, while permitting that deduction to other property owners.

(5.) In that if act 173 is susceptible of the inclusion of highway taxes in the dividend in reaching the average rate, it violates section eleven of article XIV.

(e.) That act 173 violates the provisions of section thirty-two of article IV of the Michigan constitution, in giving no right of hearing to complainants upon the question of the rate of taxation to be imposed upon their property.

(f.) That act 173 violates the provisions of section twelve of article XIV of the Michigan constitution requiring all assessments to be on property at its cash value, in not permitting the corporations taxed



thereunder to deduct their debts from their credits, as permitted to property owners generally.

(g.) Said act violates section fourteen of article XIV providing that every law which imposes, continues or revives a tax shall distinctly state the tax and the objects to which it is to be applied, and that it shall not be sufficient to refer to any other law to fix such tax or object.

(h.) That act 173 is repugnant to the Michigan constitution in authorizing the imposition of taxes upon complainants without the exercise of legislative judgment on the rate of taxation to be imposed, or the need of the State of the amount of money required for the purposes to which the proceeds of said tax are to be devoted.

(i.) That the board of assessors in reaching the average rate included in the dividend taxes for other than State, county, township, school and municipal purposes.

WANTY, district judge, after making the foregoing statement, delivered the opinion of the court :

The defendant objects to any consideration of these cases, because he says they are brought to restrain the collection of taxes levied by the State of Michigan and, although brought against him 1185 as auditor general, they are in effect suits against the State, in which the court has no jurisdiction.

The jurisdiction of the court to restrain the collection of taxes, where the bill in good faith alleges that the constitution and statute of Michigan, under which the tax in question was levied, are repugnant to the Constitution of the United States; and that the defendant, who is the auditor general, by his acts under that constitution and statute, which, it is claimed, deny to the complainants the equal protection of the laws, is about to deprive the complainants of their property without due process of law, could hardly be seriously questioned, after the repeated declarations of the supreme court, either on the ground that the suit is against the State or on the ground that a Federal question is not involved.

*Pennoyer vs. McConnaughy*, 140 U. S., 1-10.

*In re Tyler*, 149 U. S., 164-190.

*Scott vs. Donald*, 165 U. S., 58-68.

*Tindall vs. Wesley*, 167 U. S., 204-220.

*Smyth vs. Ames*, 169 U. S., 466.

*Prout vs. Starr*, 188 U. S., 537-542-543.

But, it is seriously contended by the defendant that, if the Federal questions which are raised by the bills, which it is conceded are not fictitious, and which gave the court jurisdiction, are decided against the complainants, although the court had jurisdiction to dispose of these questions its jurisdiction immediately ceases, and it may not decide the question of the undervaluation of the property of the State which is not taxed under the statute in question when compared



with the valuation placed upon the property of the complainants, which is so taxed.

Of course, if the claim that the constitution and statute of the State violate the Constitution of the United States is fictitious and fraudulent the circuit court of the United States could not acquire jurisdiction, but, if that claim is real, and the court acquires jurisdiction it does not lose it because its decision on that question is against the complainants' contention. If this were not so, all bills for injunction, in which the jurisdiction of the Federal court is invoked on  
1186 account of a statute or constitution of a State contravening the provisions of the Federal Constitution, should be disposed of without putting the parties to the expense of taking testimony, because no testimony could possibly be considered. If it were found that the contention of the complainant was well founded, then an injunction would follow as a matter of course, and if it were found that the constitution or statute did not violate the provisions of the Federal Constitution, the jurisdiction of the court would immediately determine, and the bill be dismissed. If that contention is well founded then in these cases two years of time, and many thousands of dollars spent in taking testimony should have been avoided.

But we cannot assent to this view. If the court actually acquires jurisdiction, that jurisdiction, although acquired because the constitution or law of a State is claimed to be in contravention to the Constitution of the United States, extends to all questions involved in the controversy, and not merely to the question of the violation of the Federal Constitution. Jurisdiction of a Federal court having been properly invoked for relief against assessments as discriminating against complainant, and thus depriving it of the equal protection of the laws under the fourteenth amendment, where the complainant fails to show discrimination the bill may be retained to administer relief on other grounds, although the State court could afford adequate remedy. This was held in *Louisville Trust Company vs. Stone*, 107 Fed. 305, where Justice Day, in delivering the opinion of the circuit court of appeals of this circuit, cites with approval the case of *Nashville, etc., Railway Company vs. Taylor*, 86 Fed. 168, in which the grounds of Federal jurisdiction are carefully examined and fully stated in an able opinion by Judge Clark.

Where the Supreme Court of the United States acquires jurisdiction on appeal from this court only because a law of a State is claimed to be in contravention of the Constitution of the United States, the appeal is not dismissed because the Supreme Court decides that the claim of the Federal question involved is not  
1187 well founded. If the claim is real, and is made in good faith, then the Supreme Court acquires jurisdiction of the entire case, and of all questions involved in it.

In the case of *Horner vs. United States*, 143 U. S., 570-576-577, the court said: "We are further of opinion that where an appeal or writ of error is taken direct to this court under section five of the act

of March 3, 1891, in a case in which the constitutionality of a law of the United States is drawn in question, this court acquires jurisdiction of the entire case, and of all questions involved in it, and not merely of the question of the constitutionality of the law of the United States. This is shown by the fact that, under section five, where an appeal or writ of error is taken direct to this court, in a case in which the jurisdiction of the district court or of the circuit court is in issue, it is specifically directed that the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision, but there is no kindred limitation prescribed in regard to any of the other cases in which jurisdiction in this court of appeals or writs of error is given by section five."

In *Penn Mutual Life Insurance Company vs. Austin*, 168 U. S., 685-695, Mr. Justice White, delivering the opinion of the court, said: "But the words of the statute, which empower this court to review directly the action of the circuit court, are that such power shall exist wherever it is claimed on the record that a law of a State is in contravention of the Federal Constitution. Of course, the claim must be real and colorable, not fictitious and fraudulent.

The contention here made, however, is, not that the bill, without color of right, alleges that the State law and city ordinances violate the Constitution of the United States, but that such claim as alleged in the bill is legally unsound. The argument, then, in effect, is that the right to a direct appeal to this court does not exist where it is claimed that a State law violates the Constitution of the United States, unless the claim be well founded. But it cannot be decided whether the claim is meritorious and should be maintained without taking jurisdiction of the case. The authorities referred to as supporting the position indicate that the argument is the result

1188 of a confusion of thought, and that it arises from confounding the power of this court to review on a writ of error the action of a State court with the power exercised by this court, under the act of 1891, to review by direct appeal the final action of the circuit court where, on the face of the record, it appears that the claim was made that the statute of a State contravened the Constitution of the United States. These classes of jurisdiction are distinct in their nature, and are embraced in different statutory provisions. Having jurisdiction of the cause, there exists the power to consider every question arising on the record."

The case of *Coulter vs. Louisville & Nashville R. R. Co.*, decided by the Supreme Court of the United States February 20, 1905, and not yet reported, was a bill brought by a Kentucky railroad corporation against the members of the State board of valuation and assessment of Kentucky, and the only ground of jurisdiction alleged was that under the laws of the State of Kentucky, as administered by its executive officers, the railroad company was deprived of the equal protection of the laws, contrary to the fourteenth amendment to the Federal Constitution, because all property not exempt from taxation was required to be assessed at its fair cash value, and the

assessing officers assessed a great deal of the tangible property in the State below its cash value, and the complainants' railroad property was assessed at its full value. After deciding the Federal question, which gave the court below jurisdiction, adversely to the complainants' contention, the court then examined the evidence, and decided the question of fact involved in the case on its merits, saying that "as the claim of right under the United States Constitution was not merely colorable, and as the evidence is here, we have considered the evidence also, and our conclusion from that as well as from the law is that the bill must be dismissed."

The objection of complainants to the amendment of the Michigan constitution and the statute under which the taxes in these cases were levied are repeated in different forms in the bills of complaint, but may be grouped under a few heads, and those serious 1189 and important questions thereby raised and which were argued in the briefs of counsel, and orally at the bar, we will examine. In examining and deciding each of these questions we shall not at any time forget that the taxing power of a State is necessary to its existence, and being one of its attributes of sovereignty a statute passed for the levy and collection of its revenue must not be held void by a Federal court unless it is so clearly an illegal encroachment upon private rights as to leave no doubt of its invalidity.

The complainants claim that the provision of the fourteenth amendment to the Constitution of the United States, forbidding the State to deprive any person of his property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws, is violated by the amendment to the constitution of the State of Michigan and the statute made in pursuance thereof, under which the taxes in question in these cases were levied. As has been many times said by the Supreme Court, it was undoubtedly intended by the fourteenth amendment that no State should arbitrarily deprive any person of his property, and that equal protection and security should be given to all under like circumstances. No rule can be stated which will cover all cases, but the law must give the same protection to all persons in like condition, and impose no greater burden upon one than it does upon all others under similar circumstances. This protection extends to discrimination in laws for the levy and collection of taxes as well as to all other legislation of a State, but perfect equality and uniformity in taxation is unknown, and an effort to obtain it as near as possible is the most that legislative wisdom can accomplish.

There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the fourteenth amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways, not to compel the States to adopt an iron rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes,

1190 It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice.

Bell's Gap R. R. Co. *vs.* Penna., 134 U. S. 232 ;  
 Giozza *vs.* Tierman, 148 U. S. 657-662 ;  
 Adams Express Co. *vs.* Ohio, 165 U. S. 194-228 ;  
 Magoun *vs.* Illinois Trust & Savings Bank, 170 U. S. 283 ;  
 Billings *vs.* Illinois, 188 U. S. 97 ;  
 Merchants & M. Bank *vs.* Pennsylvania, 167 U. S. 461 ;  
 Kentucky Railroad Tax Cases, 115 U. S. 321 ;  
 Home Insurance Co. *vs.* New York State, 134 U. S. 594 ;  
 Gulf, etc., Ry. Co. *vs.* Ellis, 165 U. S. 150 ;  
 Clark *vs.* Titusville, 184 U. S. 329 ;  
 American Sugar Refining Co. *vs.* Louisiana, 179 U. S. 89 ;  
 New York State *vs.* Barker, 179 U. S. 279.  
 Charlotte, etc., R. R. Co. *vs.* Gibbes, 142 U. S. 386 ;  
 Travelers' Ins. Co. *vs.* Conn., 185 U. S. 364 ;  
 Kidd *vs.* Alabama, 188 U. S. 730 ;  
 Turpin *vs.* Lemon, 187 U. S. 51 ;  
 Florida, etc., R. R. Co. *vs.* Reynolds, 183 U. S. 471.

It is urged by complainants that due process of law requires in taxation that the tax be levied by a legislative body, which is chosen by and acts for the community that includes the person or contains the property taxed, which is not provided for by the amendment to the Michigan constitution nor the statute under consideration. That a protection is furnished to other taxpayers of the State by the laws which provide a legislative determination or judgment of the amount of taxes which ought to be imposed upon them, which determination or judgment is formed upon the consideration of the needs of the State, or of the municipality, for which the taxes imposed are to be devoted, and the amount of the taxation required to provide for such needs, while such protection is withheld from the companies subjected to taxation under the act in question. That the determination of the amount of taxes to be raised in any case or for any purpose is a legislative determination, that taxes for State purposes are determined by the legislature, taxes for municipal purposes are determined by the boards, officials or assembly upon whom is conferred, by the State, the legislative power to decide for what purpose and in what amount taxes may be raised. That in 1191 every case it is a legislative determination made in view of the public interests, and of the amount of taxes required for those interests, and this legislative power is exercised by officers chosen by or answerable to those directly interested in the district to be taxed. That the taxes here levied upon the railroad companies are strictly State taxes, imposed for State purposes, yet the legislature does not determine the amount of the tax nor is it determined by any legislative action which considers the subject of

the tax. That the legislature directs the amount of the complainants' taxes to be determined by the various county, township, city, village and school district electors, boards, councils and officers, who, in their action by which the amount of the taxation of the railroads is determined, take no account, and can take no account, of the needs of the public in respect to the purposes to which the taxes are to be devoted. That the determination of the amount of the taxes to be paid by the railroad companies is not only arbitrary, but that it is the result of chance, arising out of conditions, circumstances and actions which have no relation whatever to the objects or purposes for which the taxes are imposed upon the railroad companies.

If this is the provision of the constitutional amendment and legislation of the State of Michigan under consideration in these cases there can be no doubt of its conflict with the fourteenth amendment of the Federal Constitution. Chief Justice Marshall said of the power of taxation, in *McCulloch vs. Maryland*, 4 Wheaton, 427, "The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation;" and again, in *Providence Bank vs. Billings*, 4 Peters, 561, he said: "This vital power may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State governments. The interest, wisdom and justice of the representative body and its relations with its constituents, furnish the only security, where there is no express contract against unjust and excessive taxation; as well as against unwise legislation generally."

This principle pervades our whole system, and has been reiterated in a multitude of judicial opinions in the Federal and State tribunals from the time of Marshall to the present. Let us look at the constitutional amendment and statute of the State against which this criticism is directed, and see what foundation there is for it. The constitutional amendment provides that the legislature shall provide a uniform rule of taxation for such property as shall be assessed by a State board of assessors, and the rate of taxation on such property shall be the rate which the State board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes. The rate is prescribed by the constitution and legislature to be the average rate levied upon other property upon which ad valorem taxes are assessed. The legislature may use any method to fix the rate so long as it does not delegate its legislative function, and if the rate had been fixed at any certain percentage, or the average rate assessed upon other property for any year preceding the enactment, no constitutional objection could be urged to it. As was said by the Federal Supreme Court, in *Delaware Railroad Tax Case*, 18 Wall., 206-231, "The State may

impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction." Then if the legislature had the absolute power to fix the rate what more equitable rate could it have adopted than the average rate paid by the other tax payers of the State? This seems not to have been a scheme to produce inequality, but a carefully devised scheme to distribute the burdens of taxation equally upon all tax payers. However, the character of the rate cannot be brought in question here. The only question is, Did the legislature fix it, or is it fixed by the determination of the various legislative bodies of the different taxing districts into which the State is divided? "A rate ascertained as the result of that which is enacted may be regarded as authorized by law, as well as a rate declared in terms." Morton Bliss & Co. vs. Comptroller General, 4 S. C. 477.

The local legislative bodies in determining the amounts to be raised by taxation in their respective jurisdictions, and the assessing boards in placing a valuation upon the property to be taxed, do not fix the rate, under this statute, to be paid by the complainants. They fix the rate to be paid by their several constituencies who appointed them and to whom they are responsible, and the State legislature, which is a body representing the complainants, fixes the rate at which the complainants are taxed to be the average rate placed on the other property of the State, which is ascertained by a mathematical calculation. The rates at which the respective communities are taxed are facts in the production of which the discretion of the officers and the needs of the various communities for which they act is certainly an element, but after the facts are produced the legislature may take them for its guide in fixing a rate, as it may take any other fact which moves its discretion. If the legislature were to convene each year after the assessments throughout the State had been levied, and should use the assessment rolls of the various assessing officers for the purpose of ascertaining the average rate levied upon other property upon which ad valorem taxes are assessed, and assess the property of complainants at that rate, there could be no constitutional objection to the tax, and yet the rate would be the same and it would be ascertained in exactly the same way, except that a committee of the legislature would do the clerical work of making the mathematical calculation, which under the statute we are considering is done by the State board of assessors. It seems clear that there is no discretion given to the State board of assessors in determining the rate at which the complainants' property is taxed under this statute, but

1194 the State board of assessors in determining the rate at which the complainants' property is taxed under this statute, but



that they perform only a clerical duty in taking the facts evidenced by the various assessment rolls in ascertaining a rate which has been fixed by the constitution and legislature.

In *Home Life Ins. Co. vs. New York*, 134 U. S. 594-600, the court said: "The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows."

And in *Maine vs. Grand Trunk Ry. Co.*, 142 U. S. 217-229, the court said: "If the amount ascertained were specifically imposed as the tax, no objection to its validity would be pretended. And if the inquiry of the State as to the value of the privilege were limited to receipts of certain past years instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and, if not, we do not see how a reference to the results of any other year could affect its character."

We do not think the method of determining the rate violates the fourteenth amendment to the Federal Constitution, because we think the rate is fixed by the Michigan constitution and legislature, and not by the local legislatures and assessing officers of the counties, cities, towns, villages and school districts of the State.

Taxation by average rate is not confined to Michigan.

See chap. 64 Public Statutes and Session Laws of New Hampshire, in force Jan. 1, 1901;

Revised Laws of Mass. (1902), vol. 1, chap. 12, sec. 93, p. 227; chap. 14, secs. 37-40;

Revised Statutes of Missouri (1899), vol. 2, pp. 2175-2176, secs. 9363-9364;

Laws of Wis. (1903), chap. 315, secs. 7 to 14, pp. 496 to 499.

In Missouri "the average rate levied in the several school districts" is imposed upon railroads, and it has been sustained  
1195 as not violating the State or Federal Constitution, although the act requires the use, in determining the average rate, of taxes assessed in municipalities in which the railroad has no property. *Chicago & Alton R. R. Co. vs. Lambkin*, 97 Mo. 496.

It is urged that the equal protection of the laws is denied to the complainants because section fourteen of article XIV of the constitution of Michigan, which provides that "every law which imposes, continues or revises a tax shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object," protects all other tax payers except the companies taxed under the statute in question.

This section has been construed by the State supreme court in the case of *Walcott vs. The People*, 17th Michigan, 68-76, where the act taxing express companies was attacked as not in compliance with the section of the Michigan constitution above quoted. That statute



required the express company to pay into the treasury a specific State tax of one per cent. of the gross amount of its current business in the State. The court says: "It is provided by article XIV, sec. 1, const., that 'all specific State taxes, except those received from the mining companies of the Upper peninsula, shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State debt, in the order herein recited, until the extinguishment of the State debt, other than the amounts due to educational funds, when such specific taxes shall be added to and constitute a part of the primary school interest fund.' It is apparent that the fundamental law has irrevocably prescribed the application of all such specific State taxes as that imposed by the act in question, and that the legislature could in no manner change the purpose or alter the destination of the tax. The application is not only unalterably fixed, but it is specifically defined, and nothing could be added by legislation but an idle repetition of the language of the constitution.

The statute distinctly describes the tax, and directs its payment into the State treasury, and the constitution then takes 1196 the subject from the sphere of legislative discretion, and decrees the uses to which the money must be appropriated. It inevitably follows, that by the conjoint operation of the statute and constitution, the object to which the tax would be applied is made most distinct and certain, and no language in the act could make it more so."

The constitution and statute here in question distinctly state that the educational fund referred to in section 1 of article XIV of the State constitution will need each year the amount to be collected by the taxation of the property referred to in the act, at the average rate which is imposed upon other property upon which ad valorem taxes are assessed. If we are right in what has already been said in regard to the rate being fixed by the Michigan constitution and legislature, and not by the local legislatures of the various assessing districts, then the law distinctly states the tax and the object to which it is to be applied, and does not conflict with section 14 of article XIV of the constitution of Michigan.

In reply to the objection that no hearing is provided for before the tax is imposed it is sufficient to say that if a definite rate were imposed by the constitution and statute there could be no reason for granting a hearing, because the result could not be changed, and the Michigan supreme court has in *Board of Education vs. State Board of Assessors*, 133 Michigan, 116, decided that the duty imposed by the constitution and statute upon the State board of assessors, to ascertain and determine the average rate levied on other property upon which ad valorem taxes are assessed, is ministerial and consists of a mathematical calculation. There is then no more discretion in the State board of assessors than if the rate had been named in the constitution and statute.

In *Hagar vs. Reclamation District*, 111 U. S. 701-709-710, the

court says: "Of the different kinds of taxes which the State may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), and generally, specific taxes  
1197 on things, or persons, or occupations. In such cases the legislature, in authorizing the tax, fixes the amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold, and he be thus deprived of his property. Yet there can be no question, that the proceeding is due process of law, as there is no inquiry into the weight of evidence, or other element of a judicial nature, and nothing could be changed by hearing the tax payer. No right of his is, therefore, invaded. Thus, if the tax on animals be a fixed sum per head, or on articles a fixed sum per yard, or bushel, or gallon, there is nothing the owner can do which can affect the amount to be collected from him. So, if a person wishes a license to do business of a particular kind, or at a particular place, such as keeping a hotel or a restaurant, or selling liquors, or cigars, or clothes, he has only to pay the amount required by the law and go into the business. There is no need in such cases for notice or hearing. So, also, if taxes are imposed in the shape of licenses for privileges, such as those on foreign corporations for doing business in the State, or on domestic corporations for franchises, if the parties desire the privilege, they have only to pay the amount required. In such cases there is no necessity for notice or hearing. The amount of the tax would not be changed by it."

And in *Spencer vs. Merchant*, 125 U. S. 345-354, the court says: "The precise wrong of which complaint is made appears to be that the land owners now assessed never had opportunity to be heard as to the original apportionment, and find themselves now practically bound by it as between their lots and those of the owners who paid. But that objection becomes a criticism upon the action of the legislature and the process by which it determined the amount to be raised and the property to be assessed. Unless by special permission, that is a hearing never granted in the process of taxation. The legislature determines expenditures and amounts to be raised for their payment, the whole discussion and all questions of prudence and propriety and justice being confided to its jurisdiction. It may err, but the courts cannot review its discretion."

1198 See also—

*Falbrook Irrigation District vs. Bradley*, 164 U. S. 174;  
*Walston vs. Nevin*, 128 U. S. 582;  
*Paulsen vs. Portland*, 149 U. S. 39-40.

It is contended by the complainants that the classification of their property in the statute under which these taxes are levied is based solely on ownership, and does not include property of the same kind owned by natural persons or corporations which are taxed under the general laws of the State, and therefore denies to complainants

the equal protection of the laws. It can hardly be contended, and we do not understand that the complainants seriously urge that the fourteenth amendment, as applied to railroad corporations, does not permit a separate classification of their property for the purpose of taxation, as that question seems to have been placed, by authoritative decisions, beyond controversy.

In *Kentucky Railroad Tax Cases*, 115 U. S. 321-336-337, Mr. Justice Matthews, in delivering the opinion of the court, said: "The discrimination against railroad companies and their property, which is the subject of complaint, as being unjust and unconstitutional, arises from the fact that, in the legislation of Kentucky on the subject, railroad property, though called real estate, is classed by itself as distinct from other real estate, such as farms and city lots, and subjected to different means and methods for ascertaining its value for purposes of taxation, and differing as well from those applied to the property of corporations chartered for other purposes, such as bridge, mining, street railway, manufacturing, gas and water companies. These latter report to the auditor the total cash value of their property, and pay into the treasury as a tax, upon each \$100 of its value, a sum equal to the tax collected upon the same value of real estate; and their reports and valuations are treated as complete and perfect assessments, not subject to revision by any board or court, and conclusive upon the taxing officers. But there is nothing in the constitution of Kentucky that requires taxes to be levied

by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the legislature has seen fit to impose."

Mr. Justice Miller, in *State Railroad Tax Cases*, 92 U. S. 575-611-612, where a statute of Illinois made provision for the assessment of the property of railroad companies by a system different from that governing the taxation of other property, which was claimed to violate the provision of the State constitution requiring uniformity of taxes, and the fourteenth amendment to the Federal Constitution, said: "There can be no doubt that all the classes named in this clause, including peddlers, showmen, inn keepers, ferries, express, insurance and telegraph companies, are taken out of the general rule of uniformity prescribed by the first clause, and the only limitation as to them is that of uniformity as to the class upon which

the law shall operate; that is, inn keepers may be taxed by one, ferries by another, railroads by another, provided that the rule as to inn keepers be uniform as to all inn keepers, the rule as to ferries uniform as to all ferries, and the rule as to railroad companies be uniform as to all railroad companies. As we have seen no evidence that the rule by which railroad property is taxed is not uniform in its action on all the railroad companies of Illinois, we can perceive no opposition to the constitution of the State in that rule. But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised, must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect."

In *Pittsburgh, etc., Railway Co. vs. Backus*, 154 U. S. 421-425, a statute by which all property of individuals and ordinary corporations was subject to valuation and assessment by county officers, while the assessment of railroad property was committed to a State board of tax commissioners, was sought to be held invalid as contravening the provisions of the fourteenth amendment to the Federal Constitution. Justice Brewer, in delivering the opinion of the court, said: "Notwithstanding the elaborate attack made both in brief and argument upon this act, it seems to us that its constitutionality has been practically settled by decisions of this court, especially those in *State Railroad Tax Cases*, 92 U. S. 575, and *Kentucky Railroad Tax Cases*, 115 U. S. 321. In both of those cases legislation providing for the assessment of railroad property by a State board, while all other property in the State was assessed by county officials, was held to be obnoxious to no provision of the Federal Constitution."

In *Florida Central, etc., Railroad Co. vs. Reynolds*, 183 U. S. 471-480, a statute of Florida selected for the purpose of re-assessment of property of railroad companies which had escaped taxation, without at the same time providing for the collection of unpaid taxes on other property. This was objected to as discriminatory and in violation of the fourteenth amendment. The court, after reviewing at length cases construing and determining the application of the fourteenth amendment, held the act valid, saying: "If the State had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the fourteenth amendment to overthrow its action. The mere fact that such legislation may operate with harshness is not of itself sufficient to justify the court in declaring it unconstitutional. These matters of classification are of State policy, to be determined by the State, and the Federal Government is not charged with the duty of supervising its action."

In *Columbus Southern Railway Co., vs. Wright*, 151 U. S. 470, it was held that a provision in a statute of Georgia, distributing for

taxation purposes the rolling stock and other unlocated personal property of the railroad company, for the benefit of counties traversed by the railroad, instead of taxing the property in the county where the railroad company had its principal office, does not violate the provision in the fourteenth amendment to the Constitution, that no State shall deny to any person within its jurisdiction the equal protection of the laws.

In *McHenry vs. Alford*, 168 U. S. 651-665-673, a specific tax on gross earnings in full of all taxation of land and other property of railroads, it was held did not deprive other owners of similar lands, taxed upon their value, of equal protection of the laws.

The last expression of the Supreme Court of the United States on this question was in the case of *Coulter vs. Louisville & Nashville R. R. Co.*, *supra*, in which the question of the State's right to tax the property of corporations in a different class, and at a different rate, from the other property of the State, is disposed of in a single sentence, as follows: "If it be a fact that the franchise of a Kentucky corporation is taxed at a different rate from tangible property in the State, there can be no question that the State had power to tax it at a different rate so far as the Constitution of the United States is concerned."

But the complainants contend that in the Michigan statute under consideration a different method is provided for the taxation of railroad property owned by railroad corporations, and railroad property owned by individuals and other corporations. It is stated that a number of individuals and manufacturing corporations of the State own and operate railroads, chiefly for logging purposes, but incidentally for carrying passengers and freight for hire, and that complainants' property is not legally subject to a different method of taxation than the property of these individuals and manufacturing corporations used in the same business.

The complainants are all incorporated under the statutes authorizing the incorporation of railroad companies, which statutes give to the complainants powers and privileges not enjoyed by any other corporations or individuals. It cannot be said that individuals and corporations which have no right of eminent domain and the various privileges accorded to railroad companies incorporated under the railroad statutes of the State are in the same class with railroad corporations which exercise these rights and privileges. The fourteenth amendment to the Federal Constitution permits the legislative power of the State to classify property for the purpose of taxation, according to its use by railroad companies which are given these powers and privileges. It is not necessary that all railroad property be taxed under one method and at the same rate, but it is only necessary that all property belonging to railroads in the same class be taxed alike.

If it is conceded that these logging roads owned by manufacturing corporations or individuals are railroads, they certainly are not

railroads of the same class with the complainants. It seems as though it must be as competent for the legislature to place different classes of railroads in different classes, for the purpose of taxation, as it is to place railroads in a class by themselves and tax them and their property differently from other persons. Street railroads, which are chartered by the ordinances of various cities, and electric suburban roads, organized under a general statute for that purpose, have different privileges and powers from those given to the roads organized under the general railroad statutes; and those roads built for service in the business in which individuals and manufacturing corporations are engaged have still further restricted powers and privileges, and we can see no reason why, in its discretion, the legislature may not, for purposes of taxation, place the railroads organized under the general railroad statutes in a class by themselves, leaving the other roads to be taxed under the general laws of the

State, without violating the fundamental principles of taxation, or the fourteenth amendment to the Federal Constitution. The property of railroad corporations in Michigan has, previous to the present act, been taxed at a percentage of their gross earnings in lieu of other taxes, and it has never been thought that the property of a lumber company, or manufacturer, used in the operation of a private railroad in his business, came within the terms of the statute, or that the statute was unconstitutional because such property was not included.

If we are right in concluding that the property of railroad corporations may lawfully be placed in a class by itself for the purpose of taxation, and be taxed under a method entirely different from that applied to other property, then *a fortiori* it is not necessary to make provision for the equalization of the assessment of the property so taxed with the other property of the State, not so taxed.

But it is insisted by the complainants that the Michigan constitution requires all assessments to be at the cash value of the property assessed, and although it may be legal to provide for the assessment of the property of railroad corporation by a State board of assessors, and the assessment of other property of the State by local assessors, in order to have equality there must be an equalization of all the assessments, so that the property not assessed at its cash value may not pay a greater or less proportion than property so assessed.

The constitution of Michigan provides that all property paying ad valorem taxes shall be assessed at its cash value, no matter by what board or officers the assessment is made, and if the officers who make the assessments do their duty, as the law presumes they do, there is necessarily an equalization in the assessment. The argument at the hearing was founded on the presumption that there is and always has been in the State of Michigan a systematic violation of the requirements of the laws in this regard, and that an equalization is necessary so that all property may be assessed, not at its cash value, but at its relative proportion to its cash value when compared to the assessments placed on the other property in the



State. Statutes cannot be declared invalid on the ground that the officers acting under them fail to perform the duty which the statutes impose. If the complainants have been discriminated against by a systematic and fraudulent failure on the part of the assessing officers to perform their duty they may seek relief in a court of equity from the excessive burden placed upon their property by such failure, but the relief is from the misconduct of officers acting under valid statutes, and not from statutes which work injustice only when violated.

It is unnecessary to cite other authorities on this question when it has been settled by the Supreme Court of the United States, in the case of *Cummings vs. Bank*, 101 U. S. 153-160-161, where, speaking for the court, Justice Miller said: "We thus see that one board of equalization has charge of the valuation of the real estate of the whole State once in every ten years, another has charge of the valuation of railroad property every year, and a third has charge of the valuation of shares of incorporated banks every year, and the amount fixed by these State boards is in every instance the final basis of taxing that species of property for State and county purposes. We are asked to decide that, as to this final board of equalization of bank shares, whose function is to equalize the valuation of those shares, as among themselves, throughout the State, with no power to consider the valuation of real estate which comes before another board only once in ten years, or other personal property and invested capital which never comes before any State board, that its operations must necessarily produce inequality in valuation as it regards other property, and is therefore void, as in conflict with the State constitutional rule of uniformity, and with the third section of the same article of the constitution, declaring 'that all property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals.' But there are two reasons why we cannot so hold. First, it might be that in every instance the result would be the valuation of bank shares at a lower ratio in proportion to its real value than that of any other property, and therefore plaintiff would have no ground of complaint. And secondly, what is more important, if these original valuations and equalizations are based always, as the constitution requires, on the actual money value of the property assessed, the result, except as it might be affected by honest mistakes of judgment, would necessarily be equality and uniformity, so far as it is attainable. So that while it may be true that this system of submitting the different kinds of property subject to taxation to different boards of assessors and equalizers, with no common superior to secure uniformity of the whole, may give opportunity for maladministration of the law and violation of the principle of uniformity of taxation and equality of burden, that it is not the necessary result of these laws, or of any one of them; and a law cannot be held unconstitutional because, while its just interpretation is consistent with the constitution, it is unfaithfully ad-



ministered by those who are charged with its execution. Their doings may be unlawful while the statute is valid."

It is urged by complainants that the act in question denies to them the equal protection of the laws because under the general laws of Michigan, in the assessment of personal property, debits are required to be deducted from credits, while this statute requires the credits of complainants to be taxed at their cash value, without any deduction of indebtedness owed by them, making a different rule of valuation, for which no just reason exists.

Again, the right of the State to make a classification by which railroad property may be lawfully taxed by a different method from that under which other property is taxed becomes important. If the conclusion we have reached in examining the cases upon this question is correct, then all railroad property, including credits, may be taxed under a different method from that applied to other property. If the credits are a part of the railroad property, used in the railroad business, it must be permissible to place them, for purposes of taxation, with the other railroad property in the State in a separate class. The act under which these assessments were made provides that the description of the property upon the assessment roll may be "real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a State board of assessors;" 1206 and the whole act contemplates the taxation, as a unit of all the property used in carrying on the railroad business of the railroad company.

In the case of the Detroit, Grand Rapids & Western Railroad vs. Railroad Commissioner, 119 Michigan, 132, the railroad company claimed that the interest received by it on loans and deposits was not a part of the gross income received in carrying on its business within the meaning of the statute, which provided for the taxation of railroad companies at a percentage of the gross income received in carrying on its business; but the court held that the interest on loans and deposits should be included in the earnings from the railroad business for the purpose of fixing the taxes.

And in *Chamberlain vs. Walter, et al.*, 60 Fed. 788-793, Judge Simonton held that "A railroad is a unit, every part contributing to its purposes as a whole. If it be a corporation, its corporate purpose is the maintaining a railroad, and all and every part of this property must contribute to this purpose. Its right of eminent domain is limited to this purpose. This unit is made up of lands, personal property, *choses in action*, easements, all dependent upon and inseparable from each other, deriving their value from this inseparability—from the fact that they contribute to this unit. They differ from every other species of property, and the discrimination made, as between them and other corporations and individuals, in the methods and instrumentality by which the value of their property is ascertained, is not invalid. The mode prescribed by the legislature of this State is to get at the value of the plant—that is,

of all these elements going to make up the railroad—and to ascertain what their combined contributions making up this unit are worth. If they separated the component parts, and attempted to fix separate values upon them, they would enter into an impossible task."

In one class properly segregated it would be competent for the State to exempt any part of the property or all of the property, while the same kind of property in another class was made to bear the whole burden of taxation, and *a fortiori* in reducing credits by debits in one class, and not in another, or exempting credits entirely in one class and taxing them in another, does not exceed the power of the State, nor deny the equal protection of the laws. But, under the terms of the act in question the credits, as such, are not necessarily taxed, but are taken into consideration by the board, as are all of the other fourteen items in the report of the companies provided to be filed, in determining the cash value of the property as a whole. If the credits were taken into consideration and no reduction was made in the value of the property as a unit on account of indebtedness, which the company was shown to have, and the property was on that account assessed at more than its cash value, then the complainants should have appeared before the board, at its meetings, provided for by the act, for the purpose of reviewing the roll and correcting the valuation of the property, and had the valuation reduced. But if the statute could be construed to conflict with the general laws of Michigan, and it should be conceded that provision for deduction of debits from credits must be made, the statute would not be rendered void on that account, nor the assessment invalid. If the railroad company had no debts to deduct it could not be harmed, and if it had, that fact must be shown before relief could be asked. Supervisors vs. Stanley, 105 U. S. 305.

We have come to the conclusion, after a careful examination of all of the objections urged against the validity of the constitutional amendment and statute of Michigan, under which the taxes in these cases were levied, that they cannot be held to violate the Constitution of the United States; and therefore it is unnecessary for us to discuss the proposition of defendant claiming that a railroad company by voluntarily reorganizing under the general railroad law of the State, after the adoption of the constitutional amendment and legislation became subject thereto and can not question their validity.

The complainants urge that if it is ruled that there is no valid objection to the law under which these taxes were levied, that the assessments made in the year 1902, by the assessing officers generally, and in a great number of the different and various assessment districts of the State, of the property assessed otherwise than under the act in question were intentionally made at less than the true cash value of the property assessed, and that the assessments so made did not express the real judgment of

the assessing officers making the assessments, and thereby a greater rate and burden of taxation, to the extent of twenty per cent., was put by the State board of assessors upon the complainants' property than would have been put thereon if such assessments had been made by the assessing officers as required by law, and that to the extent of such excess the collection of taxes based thereon would deprive the complainants of their property without due process of law.

As we have already said, we think the court having jurisdiction of the case, notwithstanding the law has been found to be valid, has the power to examine the evidence and determine this question. In attacking these assessments the complainants must attack the judgment of officers who are by law entrusted with the determination of the value of the property, and the attack can only be effective by proving facts which make out a situation equivalent to fraud. The law is settled, and it seems to be agreed by counsel on both sides that relief from an undervaluation of the other property of the State must depend upon that undervaluation having been so habitual, systematic and intentional as to amount to fraudulent undervaluation. The complainants have shown that there are 1,300 separate assessing districts in the State of Michigan in which assessing officers prepare assessment rolls for their respective assessment districts. These assessment rolls are submitted to a local board of review, which has authority to change the valuations appearing on the rolls, and the law requires that this property shall be assessed at its true cash value.

Under the repeated and almost universal demand for equal taxation, in 1899 the legislature attempted by the organization of a board of State tax commissioners, with general supervisory power over the local assessors and authority to change the valuations placed upon the rolls to such an extent as to bring the same up to its judgment of the true cash value, to accomplish that object.

1209 The duties of the commissioners were "to take such measures as will secure the enforcement of the provisions of this act, to the end that all of the properties of the State liable to assessment for taxation shall be placed upon the assessment rolls, and assessed at their actual cash value." A table is found in the evidence, made by the board of State tax commissioners after the board was appointed and it had investigated the subject, showing that in the judgment of the board the percentage of the value of property as found on the assessment rolls ranged from 22.8 per cent. to 108.7 per cent. of its true cash value, and that there was absolutely no uniformity in the undervaluation or overvaluation of property placed on the rolls.

The commissioners attempted to force the assessing officers throughout the State to obey the law requiring them to assess all property for taxation at its true cash value. They endeavored to visit the different portions of the State and interview the assessing officers. They gathered evidence themselves and through employees, and endeavored to determine in what localities the law was being dis-

regarded and use their best efforts to correct all violations. They conferred with the assessing officers, held meetings with supervisors, and emphasized the importance of listing all property subject to taxation at its true cash value, and pointed out that equal taxation and uniformity of assessment throughout the State can be accomplished in no other way. Wherever they found undervaluations they attempted to correct them, and if they found any officials who were wilfully violating the law in regard to listing property at its true cash value they in a number of instances prosecuted such officers. The commission found that, in their judgment, few assessments of property had been made at cash value, but they endeavored to correct errors as fast as they found them.

For the year 1902, when the assessed valuation of the property not taxed under the law in question, according to the judgment of the assessing officers was \$1,418,251,858, the tax commission estimated the valuation of the same property at \$1,715,000,000. It is 1210 on account of the difference between the valuation placed upon this property by the assessing officers of the State and the valuation placed upon it by the tax commission that the complainants claim that the property not taxed under the law in question was assessed at only 82.4 per cent. of its value. Members of the State board of tax commissioners were placed upon the stand by the complainants, and testified that the old plan of assessing property at a percentage of its value still prevailed in 1902, and that they had made a return to an order to show cause in a suit brought by the board of education of the city of Detroit, heretofore referred to in the statement of this case, in which they stated that the undervaluation of the property of the State, subject to ad valorem taxes for State, county, township, school and municipal purposes, throughout the State, was not the result of accident, inadvertence or mistakes in judgment; but that undervaluation of such property was in a large number of municipalities of the State intentional and general, and that this practice of undervaluation had been in vogue in this State for a number of years, which statements they testified were true. The secretary of the board, and some of its employees also testified that in their opinion, the property not taxed under the statute in question was assessed at only a percentage of its cash value.

It would take more space than could be allowed to review all of the testimony on this branch of the case, but when the history of the tax commission, as shown in the evidence in this record, is reviewed, it cannot be questioned that they have performed their duties in an energetic and effective manner. In the year 1899, on complaint of members of the commission, a number of the assessing officers were removed for underassessment of property, and that the commission succeeded in correcting a great many assessment rolls where the property had been undervalued previous to the organization of the commission is shown by the fact that the valuation of the properties of the State, not taxed under the statute in question,

in this case, was increased from 1899 to 1900 more than three hundred and forty-nine million dollars; that is, from \$968,169,087 in 1899 to \$1,317,450,028 in 1900, an increase of more than one-  
1211 third; and the aggregate value of the properties of the State, not assessed under the statute in question, in 1902 was raised to \$1,418,000,251.53, making another increase of more than one hundred million dollars. If the address of the governor to the legislature before this commission was organized, that the property of the State was assessed at only 65 per cent. of its cash value, was considered extravagant at the time, a justification for the creation of the commission can certainly be found in these figures. The testimony indicates that at the suggestion and solicitation of the commissioners the assessing officers and boards of equalization endeavored to comply with the law, and, although in the judgment of the members of the commission, they have not yet done so, it does not seem from the testimony that there was in 1902 the systematic, intentional and illegal undervaluation which is necessary before the taxes of those alleged to be discriminated against can be set aside. Whatever the custom might have been previous to 1899 among assessing officers of the State, there certainly is nothing in this record which shows that there is now any general or uniform fraudulent under-assessment, and if the properties appearing on the rolls are underassessed that conclusion must be reached by substituting the judgment of the members of the tax commission, who were sworn by the complainants in the case, and their employees, for the judgment of assessing officers. The testimony shows that the assessing officers, who reside in the districts in which the property is situated, have much better facilities for forming a judgment, and there is no testimony which shows that in the assessment of 1902, as a general rule, their judgments were not honestly formed.

In the case of the Louisville & Nashville R. R. Co. vs. Coulter, 131 Fed. 282, which was much quoted and relied upon by complainants at the hearing, it was made to appear, and it is stated in the opinion it was conceded by the defendants, that the property of the State was assessed at not more than 70 per cent. of its cash value in 1891, and that there was as much property, compared in quantity, in 1902 as  
1212 in 1891; and it was shown that in the year 1891 the assessments aggregated \$480,930,623, and for the year 1902 they aggregated \$534,417,269. From this, and from other testimony in the case, and other methods of computation set up by the judge in his opinion, which counsel for complainants say was followed by the members of the tax commission in this case, he finds that there was an illegal discrimination within the requirements of the cases, and that "the taxable property in the State was systematically, habitually and intentionally undervalued to at least the extent of 20 per cent. for the year 1902, first by the local assessing officers, and then by the equalizers." The court, in its opinion said: "The way we view it, to permit the valuation of complainant's intangible property as made to stand would be a palpable violation

of its rights. It is an attempt to make it pay on a 100 per cent. valuation when the bulk of the taxpayers pay on not exceeding an 80 per cent. valuation. This of itself is sufficient to require that this court should intervene."

When this case came before the Supreme Court of the United States (*Coulter vs. Louisville & Nashville R. R. Co., supra*), the language used in reversing the decree below and dismissing the bill, when applied to the case at bar, seems to us to dispose of this contention of the complainants. Mr. Justice Holmes, in announcing the unanimous opinion of the court, said: "The undervaluation in the counties, looked at from the point of view just indicated, also does not appear to have been such as to warrant the action of the court. It is not contended that a mere undervaluation would be enough. It is admitted that it must have been systematic and intentional. There is, no doubt, a natural inclination to think such an undervaluation probable when it is suggested. But what is the proof? The State constitution, whatever the statutes may have said, seems popularly to have been understood to have made a great change in the law. Practice before its adoption, therefore, can hardly raise a presumption as to the practice afterwards, even on the liberal assumption that it properly could be considered in evidence. It is obvious that the accidental sales in a given year may be a misleading guide to average values, apart from the testimony that some at least of the conveyances did not report true prices, yet they furnish the chief weapon of attack.

1213 The testimony as to the board of equalization taking eighty per cent. of the reported sales, was explained by the members of the board. It would be going very far to assume that they were committing perjury because to another mind the sales seemed more significant and the explanations not very good. Inequality, we repeat, is nothing, unless it was in pursuance of a scheme. To make out that scheme the anomalous course was followed of putting members of a tribunal established by law upon the witness stand to testify to the operations of their minds in doing the work entrusted to them. *Fayerweather vs. Ritch*, 195 U. S. 276-306-307. But the prevailing testimony was that no such scheme was entertained. Whatever we may surmise or apprehend, making allowance for a certain vagueness of ideas to be expected in the lay mind, for the reasonable differences of opinion among the most instructed and competent men, and for the uncertainty of the elements from which a judgment was to be formed in the first instance, considering the still greater uncertainty of those from which the local judgment must be controlled, if at all, by persons having only the printed record before them, considering further that to maintain the bill imputes perjury to many witnesses whose character is not impeached, and finally recalling once more that we are dealing with a case that properly was not cognizable in the circuit court, we are of opinion that the bill must be dismissed."

The failure of complainants to show a fraudulent, intentional,



systematic undervaluation of the property not assessed under the statute under which their taxes are levied makes a determination of the question of the undervaluation of the railroad properties unnecessary.

Decrees may be entered dismissing the bills.

Opinion filed May 19th 1905.

1214

FRIDAY, May 19, 1905.

The court met pursuant to adjournment.

Present: The Honorable George P. Wanty, district judge.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Com-  
plainant,

vs.

PERRY F. POWERS, Auditor General of the State of  
Michigan, Defendant.

} No. 1493.

This cause having been heard upon pleadings and proofs at a previous day in the present term of court and having been taken under advisement by the court, and mature deliberation thereon having been had, it is now ordered, adjudged and decreed that the bill of complaint in this cause be and the same hereby is dismissed, and that the said defendant do recover against the said complainant his costs, by him about his defense in this cause expended, to be taxed; and that the said defendant have execution thereof.

1215 The Circuit Court of the United States for the Western  
District of Michigan, Southern Division. In Equity.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }

vs.

PERRY F. POWERS, Defendant. }

The above named complainant, conceiving itself aggrieved by the decree made and entered on the 19th day of May, A. D. 1905, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignments of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 26th day of August, A. D. 1905.

O. E. BUTTERFIELD,  
Solicitor for Complainant.

HENRY RUSSEL AND  
ASHLEY POND,  
Of Counsel.



The foregoing appeal is allowed.

Dated this 26th day of August A. D. 1905.

GEO. P. WANTY,  
U. S. District Judge.

1216 [Endorsed:] No. 1493. The circuit court of the United States for the western district of Michigan, southern division. In equity. The Michigan Central Railroad Company, complainant, vs. Perry F. Powers, defendant. Claim of appeal. Filed Aug. 26, 1905. Chas. L. Fitch, clerk. O. E. Butterfield, solicitor for complainant and appellant.

1217 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
vs. }  
PERRY F. POWERS, Defendant.

The complainant prays an appeal from the final decree of this court to the Supreme Court of the United States and assigns for error:

1. Act No. 173 of the public acts of Michigan of 1901, approved May 27th, 1901, deprives complainant of its property without due process of law, in contravention of article XIV of the amendments to the Constitution of the United States.

2. Act No. 173 of the public acts of Michigan of 1901, approved May 27th, 1901, denies to complainant the equal protection of the laws, in contravention of article XIV of the amendments to the Constitution of the United States.

3. Act No. 173 of the public acts of Michigan of 1901, approved May 27th, 1901, regulates commerce among the several States, in contravention of section 8 of article I of the Constitution of the United States.

1218 4. That provision of section 11 of article XIV of the constitution of the State of Michigan, as amended at the general election held in November, 1900, which declares "that the legislature shall provide an uniform rule of taxation for such property as shall be assessed by the State board of assessors and the rate of taxation on such property shall be the rate which the State board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes," contravenes article XIV of the amendments to the Constitution of the United States, because it deprives complainant of its property without due process of law.

5. That provision of section 11 of article XIV of the constitution of the State of Michigan, as amended at the general election held in

November, 1900, which declares "that the legislature shall provide an uniform rule of taxation for such property as shall be assessed by the State board of assessors and the rate of taxation on such property shall be the rate which the State board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes," contravenes article XIV of the amendments to the Constitution of the United States, because it denies to complainant the equal protection of the laws.

6. Said act No. 173 of the Michigan public acts of 1901, if enforced, would take complainant's property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States, for the following several reasons, each of which is separately assigned as ground upon which the decree of 1219 the circuit court dismissing the complainant's bill should be reversed, viz:—

(a.) Due process of law requires in taxation that the tax be levied by a legislative body which is chosen by and acts for the community that includes the person or contains the property taxed and receives the tax.

(b.) The tax under such act is not imposed by the State legislature, but by the local legislatures of counties, towns, cities, villages and school districts in Michigan which do not represent complainant as to its property beyond the jurisdiction of such local legislatures.

(c.) The moneys demanded from the complainant are not taxes at all but arbitrary and forced contributions to the State so that their exaction would be taking of private property for public use without compensation.

(d.) Due process of law requires a hearing of the tax payer upon the amount of his tax, and this right of hearing extends to the amount or rate of tax as well as to the assessment or value upon which the tax must be made.

7. Said act No. 173 of the Michigan public acts of 1901, if enforced, would deny to complainant the equal protection of the laws, in violation of the fourteenth amendment to the Constitution of the United States for the following several reasons, each of which is separately assigned as ground upon which the decree of the circuit court dismissing the complainant's bill should be reversed, viz:—

(a.) While all others in Michigan are given the benefit and protection of having the amount of their taxes fixed by a representative legislature, that fundamental protection is denied complainant.

1220 (b.) Complainant's taxes are fixed in large part by executive officers, while other taxes in Michigan have their amount determined legislatively.

(c.) Other taxes in Michigan are fixed with reference to and in such amount as is deemed necessary to meet the needs of the community that pays the taxes and is to receive them, but complainant's taxes are fixed without reference to the needed revenue of the State which receives them.

(d.) Complainant is denied the protection of such legislative restraint upon the consequences to it of erroneous assessments throughout the State as is afforded by Michigan legislation to all others.

(e.) Complainant is denied such privilege of hearing concerning the amount of its taxes as the Michigan laws grant to all others.

(f.) All tax payers other than those of the class to which complainant belongs pay taxes founded upon the expenses of the State government and of the local governments whose benefits they enjoy and upon the private investment of the local communities to which they belong, while complainant is taxed because of the expenses of governments whose benefits it does not share and of private local investments in whose ownership and use it does not participate.

(g.) Equalization of assessments is denied to complainant, while it is accorded to tax payers of all other classes in Michigan.

(h.) Debits are deducted from credits in the assessment of the property of all other classes of tax payers in Michigan, while no such deduction is made in the assessment of the property of the complainant.

1221 (i.) Personal property of the complainant not used in its railroad business is taxed after the average rate plan under said act, though there can be no justification for taxing it otherwise than like personal property of other tax payers.

(j.) Complainant's credits not used in or incident to its business are taxed under said act, though there can be no constitutional propriety in treating such credits under another plan of taxation than is applied to credits generally.

(k.) Said act applies only to property owned by corporations and does not apply to property of the same kinds and used in the same kinds of business when owned by a natural person.

(l.) The corporations enumerated in said act are arbitrarily and unreasonably separated for taxation from other corporations of essentially the same character.

(m.) Complainant is denied the protection of article XIV, section 14, of the Michigan constitution which, for the benefit of all but tax payers of the class of which complainant is one, requires that "every law which imposes, continues or revives a tax, shall distinctly state the tax and the objects to which it is to be applied;" and further that "it shall not be sufficient to refer to any other law to fix such tax or object."

(n.) Discrimination of a real and hurtful kind is made by said act between railroads themselves in the taxation of railroad property because they are made to pay the same rate of tax though their properties are situated in different places and therefore receive the benefits of different local governments and participate in the advantage of different local investments. It is not equal taxation to

1222 apply the same rate to properties under different governments; and equal taxation must be applied to properties of the same kind put to the same uses, and even owned by the same sort of owners, viz. corporations.

8. The constitution of Michigan, as amended by the change of

sections 10, 11 and 13 of article XIV, made at the general election held in November, 1900, still requires uniformity in the assessment of all property subjected to ad valorem taxes; and act No. 173 of the Michigan public acts of 1901 contravenes the constitution of Michigan in that debits are not deducted from credits under said act, though debits are deducted from credits in the assessment for taxation of other property than that taxed under said act No. 173; and so the assessment of property for taxation under said act No. 173 is not uniform with the assessment of other property in Michigan taxed ad valorem. Such lack of uniformity in the assessment of property under act No. 173 and the assessment of other property violates sections 10 and 11 of article XIV of the constitution of Michigan, as amended in 1900.

9. The assessment of complainant's property under act No. 173 of the Michigan public acts of 1901, without deduction of debits from credits, while under the laws of Michigan debits were deducted from credits in the assessment of the property of others, for ad valorem taxation under the laws of Michigan, violated the requirement of uniform assessment of property subjected to ad valorem taxation made by the Michigan constitution.

10. The assessment of complainant's property under act No. 173 of the Michigan public acts of 1901, without deduction of debits from credits, violated section 12 of article XIV of the Michigan constitution requiring all assessments on property to be at its cash value.

1223 11. The assessment of complainant's property under act No. 173 of the Michigan public acts of 1901 violated the provision of section 10 of article XIV of the Michigan constitution, as amended at the election held in November, 1900, requiring property of corporations assessed by the State board of assessors to be assessed at its true cash value.

12. The assessment of complainant's property, upon which is founded the tax involved in this suit, was made at the property's true cash value. The rate imposed upon the property of complainant by the proceedings in question in this case was the average rate paid upon property in the State, other than that taxed under said act No. 173 of the Michigan public acts of 1901, upon which ad valorem taxes were assessed for State, county, school and municipal purposes. The evidence shows that such other property was uniformly, intentionally and generally assessed at the time in question at not more than eighty-two+per cent. (82+ %) of its true cash value; and seventeen—per cent. (17+ %) of the tax in question, therefore, should be set aside.

13. The circuit court of the United States erred in dismissing complainant's bill.

Wherefore, complainant prays that the decree of the said circuit court be reversed.

O. E. BUTTERFIELD,  
Solicitor for Complainant,

HENRY RUSSEL,  
ASHLEY POND,  
Of Counsel.

1224 [Endorsed:] No. 1493. The circuit court of the United States for the western district of Michigan, southern division, In equity. Michigan Central Railroad Company complainant vs. Perry F. Powers, defendant. Assignments of error. Filed Aug. 26, 1905 Chas. L. Fitch clerk. O. E. Butterfield, solicitor for complainant.

1225 Know all men by these presents, that we, The Michigan Central Railroad Company, as principal, and O. E. Butterfield and Charles M. Wilson, as sureties, are held and firmly bound unto Perry F. Powers in the full and just sum of one thousand dollars (\$1,000.00) to be paid to the said Perry F. Powers, his certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of August A. D. 1905.

Whereas, lately at the circuit court for the western district of Michigan, southern division in equity, in a suit depending in said court between The Michigan Central Railroad Company, complainant, and Perry F. Powers, defendant, a decree was rendered against the said Michigan Central Railroad Company and the said Michigan Central Railroad Company having appealed from the said court to the Supreme Court of the United States to reverse the decree and a citation having been issued directed to the said Perry F. Powers, citing and admonishing him to be and appear at a session of the Supreme Court of the United States on the 25th day of September next.

Now the condition of the above obligation is such that if the said Michigan Central Railroad Company shall prosecute its appeal to effect and answer all damages and costs if it fail to make its appeal good, then the above obligation to be void; otherwise to remain in full force and virtue.

THE MICHIGAN CENTRAL RAIL-  
ROAD COMPANY,

By J. CARSTENSEN, Vice-President.

[Seal of the Michigan Central Railroad Company.]

Attest:

D. W. PARDEE, Secretary.

O. E. BUTTERFIELD.

[L. S.]

CHAS. M. WILSON.

[L. S.]

1226 Sealed and delivered in presence of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved by:

GEO. P. WANTY,

U. S. District Judge.

STATE OF MICHIGAN, }  
 County of Kent, } <sup>ss</sup>:

O. E. Butterfield of Detroit, Michigan, and Charles M. Wilson of Grand Rapids, Michigan, sureties on the foregoing bond, being duly sworn, say and each for himself says:

That he is worth the sum of one thousand dollars, the penalty of the within bond, over and above all legal exemptions, debts and liabilities.

O. E. BUTTERFIELD.  
 CHAS. M. WILSON.

Subscribed and sworn to before me this 26th day of August, 1905.

MARY S. TOOKER,  
 Notary Public, Kent County, Michigan.

My commission expires Apr. 25, 1909.

1227 [Endorsed:] No. 1493. The circuit court of the United States for the western district of Michigan, southern division. In equity. Michigan Central Railroad Company, complainant, vs. Perry F. Powers, defendant. Bond on appeal. Filed Aug. 26, 1905. Chas. L. Fitch, clerk. O. E. Butterfield, solicitor for complainant.

1228 UNITED STATES OF AMERICA, <sup>ss</sup>:

The President of the United States to Perry F. Powers, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the city of Washington on Monday September 25th 1905 pursuant to an appeal duly allowed by the circuit court for the western district of Michigan, southern division, in equity, and filed in the clerk's office of said court on the 26th day of August A. D. 1905, in a case wherein The Michigan Central Railroad Company is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George P. Wanty, judge of the circuit court of the United States for the western district of Michigan, this 26th day of August A. D. 1905.

GEO. P. WANTY,  
 U. S. District Judge of the Western District of Michigan.

Service of a copy of the within citation is hereby admitted this 26th day of August A. D. 1905.

JNO. E. BIRD,  
 Attorney General, Attorney for Appellee.  
 LOYAL E. KNAPPEN,  
 Of Counsel.

1229 [Endorsed:] No. 1493. The circuit court of the United States for the western district of Michigan, southern division. In equity. The Michigan Central Railroad Company, complainant, vs. Perry F. Powers, defendant. Citation. Filed Aug. 26 1895. Chas. L. Fitch, clerk.

1230 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant, }  
 vs.  
 PERRY F. POWERS, Defendant. }

To the clerk of said court:

We hereby agree and consent that the record on appeal this day presented to the clerk of this court by Mr. O. E. Butterfield, solicitor for complainant, contains the pleadings and all the evidence necessary to the hearing of said cause on appeal, and all the evidence which should be included in the transcript thereof, together with a copy of the final decree entered in this cause, of the bond on appeal, and the original claim of appeal and order allowing same, assignments of error and citation filed herein.

Dated this 1st day of September, A. D. 1905.

O. E. BUTTERFIELD,  
 Solicitor for Complainant.  
 JNO. E. BIRD,  
 Attorney General, Solicitor for Defendant,  
 By ROGER IRVING WYKES,  
 LOYAL E. KNAPPEN,  
 Of Counsel.

1231 [Endorsed:] No. 1493. The circuit court of the United States for the western district of Michigan, southern division. In equity. Michigan Central R. R. Co. vs. Perry F. Powers, auditor general. Stipulation as to record on appeal. Filed Sep. 1, 1905. Leolyn O. Tenhopen, deputy clerk.

1232 THE UNITED STATES OF AMERICA, }  
 Western District of Michigan, Southern Division, } ss:

I, Charles L. Fitch, clerk of the United States circuit court for the western district of Michigan, do hereby certify that the annexed and foregoing is the record on appeal as stipulated to by the solicitors for the respective parties in said cause, and that I have added thereto a true and compared copy of the final decree entered in said cause and of the bond on appeal filed therein, and have also attached hereto the original claim of appeal and order allowing



same, assignments of error, citation and stipulation filed in said cause, the whole constituting the transcript on said appeal as made up in conformity to the stipulation of said solicitors.

Witness my official signature and the seal of said court at the city of Grand Rapids in said district and division on this first day of September in the year of our Lord one thousand nine hundred and five and of the Independence of the United States of America the one hundred and thirtieth.

{ Seal of the U. S. Circuit Court, Western District of }  
{ Mich., Southern Division. }

CHARLES L. FITCH, Clerk,  
By LEOLYN O. TENHOPEN,  
Deputy Clerk.

Endorsed on cover: File No. 19,899. W. Michigan C. C. U. S. Term No. 397. The Michigan Central Railroad Company, appellant, vs. Perry F. Powers, auditor general of the State of Michigan. Filed September 6th, 1905. File No. 19,899.

Supreme Court of the United States, October Term, 1905.

No. 397.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Complainant and Appellant,

vs.

PERRY F. POWERS, Auditor General of the State of Michigan, Defendant and Appellee.

It is hereby agreed between counsel for the respective parties that the transcript of record be and is amended (with the permission of the Court) by inserting at the end of page 119 of the original transcript (being about the middle of page 75 of the printed transcript) the following testimony:

"Q. When did you review the assessments in Detroit first? A. We have had some special reviews, we have never had any general review in Detroit.

Q. Did you have any special reviews in 1902? A. Yes, sir.

Q. And 1901? A. 1901 and 1902.

Q. What do you think the percentage was in the city of Detroit with reference to true cash value? A. It showed up there, from the examinations had, 101.

Q. 101? A. Yes, sir.

Q. Then you would say, wouldn't you, that was assessed at the true cash value? A. I would, yes, sir.

Q. Then the counties of Wayne, Kent, Bay, Saginaw, Jackson and Kalamazoo, for 1902, were up to their true cash value in every case? A. No, sir, I wouldn't want to say that. Wayne County is not now up to 100 % outside of Detroit.

Q. The other counties Mr. Twiss said were up to true cash value? A. Yes, I think that is true.

Q. You think that Detroit was at true cash value but not the county of Wayne? A. No, sir.

Q. Take the county as a whole, about what would be the percentage, do you think? A. I would not like to say, we have not concluded our findings.

Q. You are not in a position to determine about that yet? A. No, sir."

Dated February 20, 1906.

O. E. BUTTERFIELD,  
*Solicitor for Appellant.*

JNO. E. BIRD,  
*Att'y Gen'l, Solicitor for Appellee.*  
ROGER IRVING WYKES,  
LOYAL E. KNAPPEN,  
*Of Counsel.*

[Endorsed:] No. 397. Supreme Court of the United States. The Michigan Central R. R. Co., Complainant & Appellant, vs. Perry F. Powers, Auditor General of the State of Michigan, Defendant & Appellee. Stipulation amending Record.

[Endorsed:] File No. 19,899. Supreme Court U. S. October Term, 1905 Term No. 397. The Michigan Central R. R. Co., App't, vs. Perry F. Powers, Auditor General &c. Stipulation for addition to record. Filed Feb. 20, 1906.



**FILE COPY.**

Office Supreme Court U. S.

FILED

NOV 27 1905

JAMES H. HARRIS,

Clk.

---

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1905.**

**NO. 397.**

---

**THE MICHIGAN CENTRAL RAILROAD COMPANY,  
APPELLANT,**

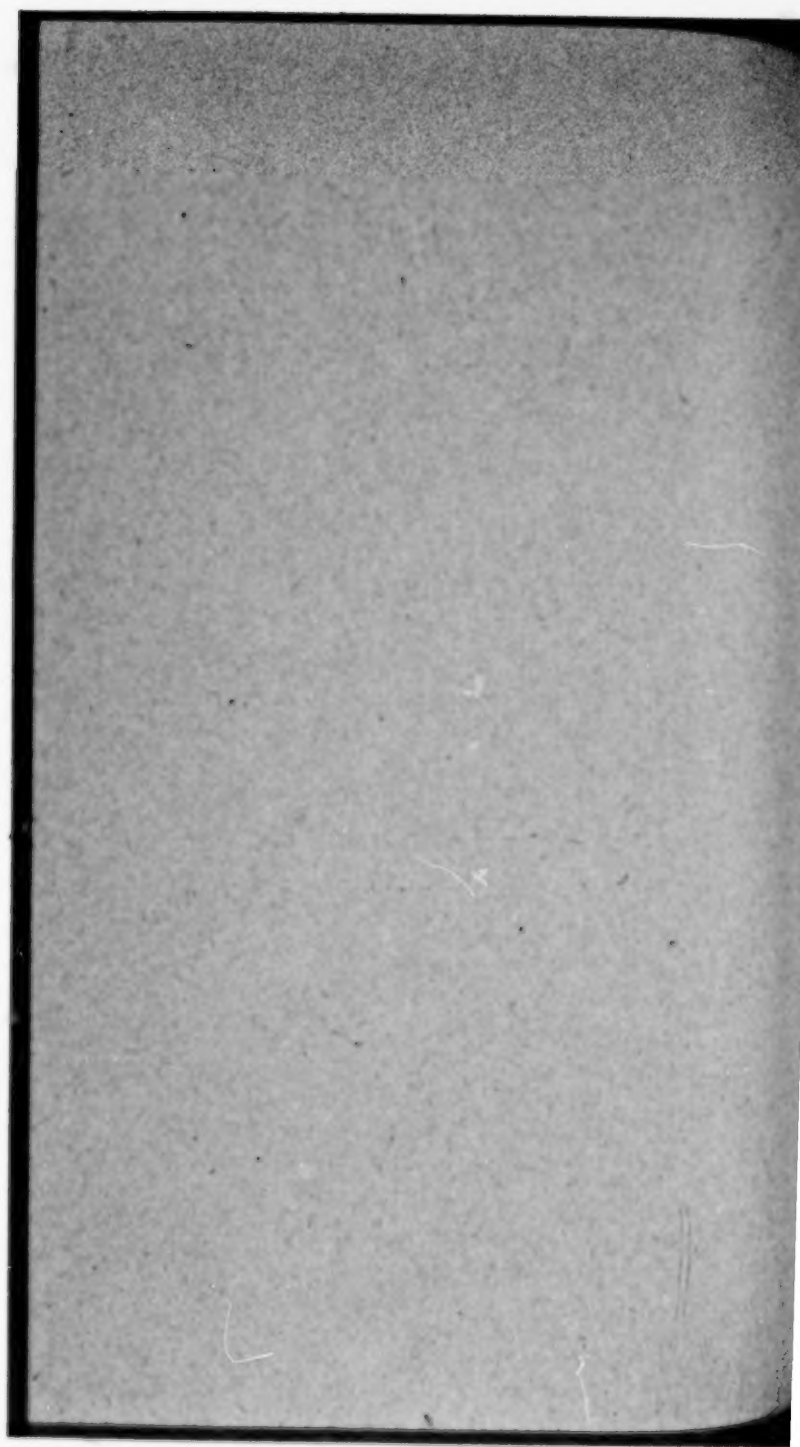
**vs.**

**PERRY F. POWERS, AUDITOR GENERAL OF THE  
STATE OF MICHIGAN, APPELLEE.**

---

**MOTION TO ADVANCE CAUSE UPON THE  
DOCKET AND NOTICE.**

---



# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

NO. 397.

---

THE MICHIGAN CENTRAL RAILROAD  
COMPANY,

APPELLANT,

VS.

PERRY F. POWERS, AUDITOR GENERAL  
OF THE STATE OF MICHIGAN,

APPELLEE.

---

And now comes the said appellee and moves the Honorable Court to advance this cause upon the docket and to hear it at as early date as the convenience of the Court will permit, and for the reason therefor he states:

That said cause is in ~~fact~~ a suit against the State of Michigan its duly authorized officers being enjoined from enforcing a certain revenue law of the State for the collection of taxes assessed against railroad corporations.

(a) Prior to 1901, railroad corporations in Michigan were taxed specifically, at a certain rate per cent upon their gross earnings, graduated according to the volume of business done.

(b) The method of taxing railroad corporations in said state was changed from a specific to an advalorem basis by certain

amendments to the Constitution of said State, in the year 1900, and the enactment by the Legislature of said State of Act No. 173 of the Public Acts of 1901, entitled "An Act to provide for the assessment of the property of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes."

(c) Pursuant to said act, the amount of taxes which the railroad corporations, parties to this suit, were required to pay for the year 1902 by reason of the assessments made by the State Board of Assessors, amounted to \$744,898.04.

(d) The Auditor General was enjoined from collecting said taxes upon the filing of the bill of complaint in the Circuit Court of the United States for the Western District of Michigan, the various railroad corporations, parties hereto, contending that said Act, under which the assessments in questions were made, was unconstitutional and void.

(e) The railroad corporations in question contended that the former laws of the State of Michigan were still in force and that they should be permitted to pay specific taxes on the basis thereof.

(f) Pursuant to such contention, there was paid by said railroad corporations, to the Auditor General of the State of Michigan, the sum of \$263,446.30.

(g) The difference between the amount which the State of Michigan contends said railroad corporations should have paid, and the amount which they actually paid, is the sum of \$481,451.74.

(h) For subsequent years the railroad corporations in question have refused to pay the assessments made by the State Board of Assessors under and pursuant to said Act of 1901, but have continued to deposit with the Auditor Gen-

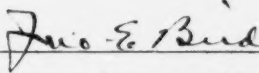


eral the taxes which they would have been required to pay under the former law.

The revenues of the State of Michigan derived from the assessment of this class of corporations have, therefore, been greatly impaired, and it is specially important to the State of Michigan that the questions at issue in this cause be determined at as early date as the convenience of this Honorable Court will permit.

Respectfully submitted,

Dated November 17<sup>th</sup>, A. D. 1905.

A handwritten signature in cursive script, reading "Geo. E. Bird", is written over a horizontal line.

Attorney General of Michigan,  
Solicitor for Appellee.

Business Address: "Capitol," Lansing, Michigan.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

NO. 397.

---

THE MICHIGAN CENTRAL RAILROAD  
COMPANY,

APPELLANT,

VS.

PERRY F. POWERS, AUDITOR GENERAL  
OF THE STATE OF MICHIGAN,

APPELLEE.

---

SIR—Please to take notice, that on Monday the 27<sup>th</sup>  
day of *November* A D 1905, I will apply to the  
said Court, by motion, to advance said cause upon the Docket  
and to hear it at as early a date as the convenience of the  
Court will permit.

You are herewith served with a copy of said motion.

Dated this *7<sup>th</sup>* day of ~~November~~, A. D. 1905.

*Geo. E. Bird*  
Attorney General of Michigan,  
Solicitor for Appellee.

To O. E. Butterfield,  
Solicitor for Appellant.

Henry Russel,  
Ashley Pond,  
Of Counsel.

STATE OF MICHIGAN, }  
County of Ingham. } ss.

Henry E. Chase, Deputy Attorney General of the State of Michigan, being first duly sworn, deposes and says that he caused a copy of the foregoing motion and notice to be served upon the said appellant by depositing copies thereof, enclosed in a sealed envelope, with postage fully prepaid thereon and properly addressed, to O. E. Butterfield, Attorney at Law, Detroit, Michigan, in the United States Postoffice at Lansing, Michigan, on the <sup>23<sup>rd</sup></sup> day of November, A. D. 1905, the said O. E. Butterfield being the solicitor of record for said appellant and that being his proper postoffice address.

Henry E. Chase

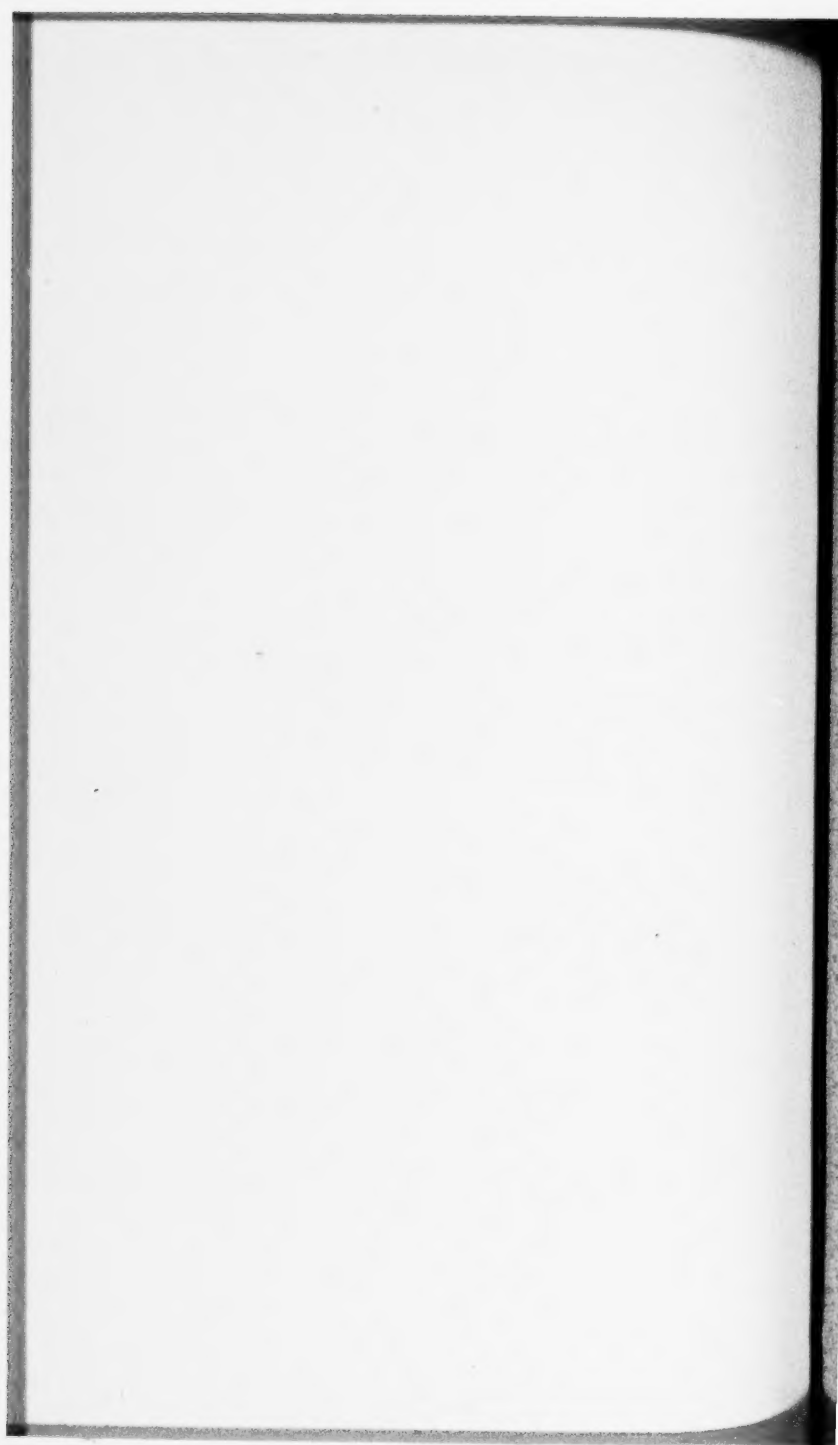
Subscribed and sworn to before me this <sup>23<sup>rd</sup></sup> day of November, A. D. 1905.

Amos Ambrose Lawler

Notary Public, Washburn County, Michigan,

Acting in Ingham County.

Commission expires Dec. 21-1908



FILE COPY.

# THE SUPREME COURT

OF THE UNITED STATES  
FILED  
FEB 3 1906  
JAMES P. McKENNEY,  
Clerk.

THE MICHIGAN CENTRAL  
RAILROAD COMPANY

vs.

PERRY F. POWERS, Auditor  
General of the State of Mich-  
igan.

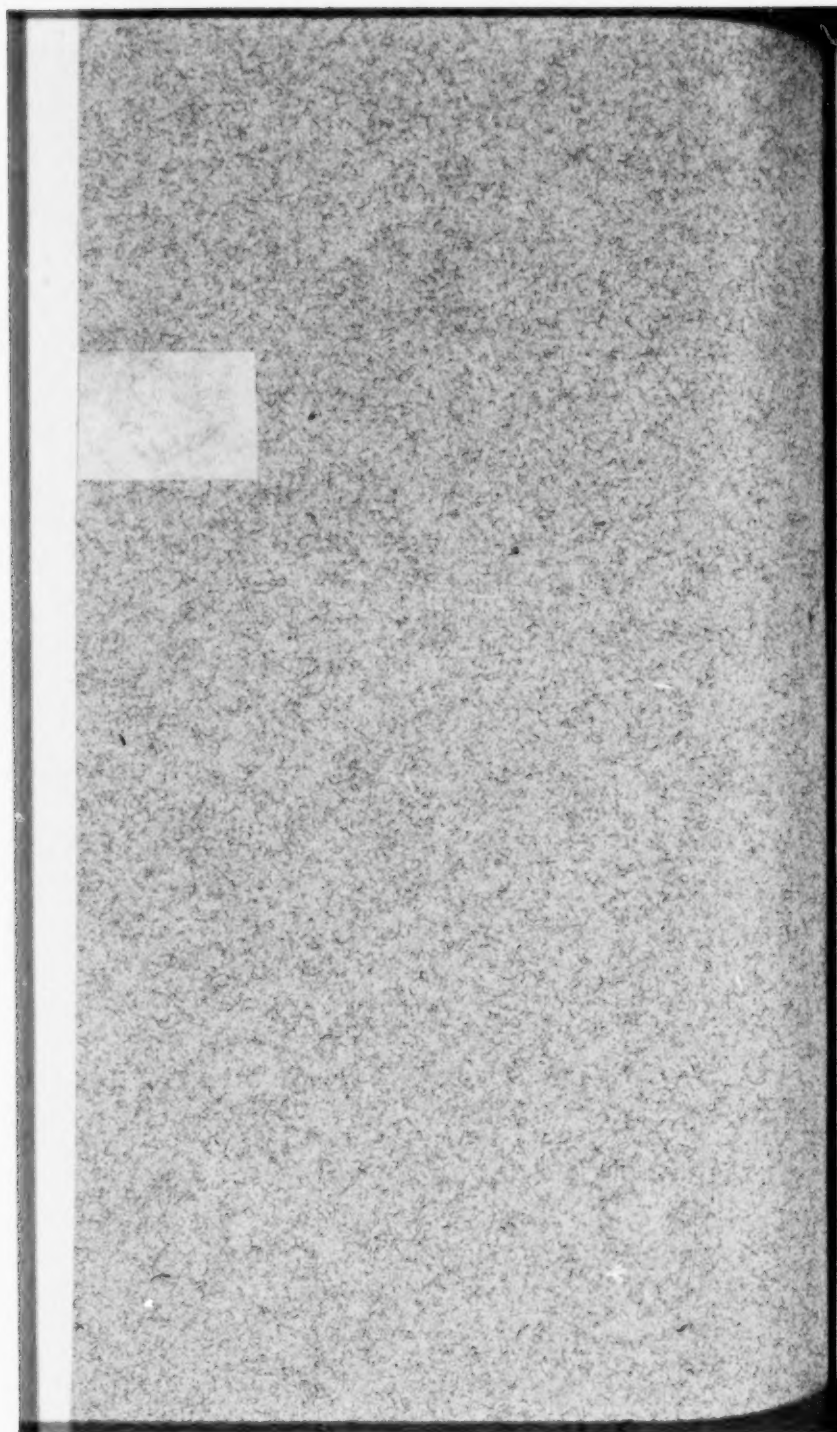
No. 397.

BRIEF IN BEHALF OF THE COMPLAINANT.

BENTON HANCOCK,  
*Of Counsel for Complainant.*

O. E. BUTTERFIELD,  
*Solicitor for Complainant.*

A. C. ANGELL,  
HENRY RUSSELL,  
ASHLEY POND,  
LLOYD W. BOWERS,  
*Of Counsel.*



## INDEX.

---

	Page.
Statement of the case.....	1
Points considered.	
I.	
Jurisdiction of the Court to enjoin the collection of the taxes.....	6
II.	
The provisions of the Fourteenth Amendment apply to proceedings adopted for the levy and collection of taxes.....	18
III.	
The equal protection of the laws is denied to rail- road companies in the provisions of Act No. 173, by which the amount of the taxes imposed on them is determined.....	22
IV.	
The determination of the rate of the taxation as required by the provisions of the act by the action of the municipalities, and not by the action of the legislature, violates the requirement of due process of law in the taxation of the railroad companies .....	47



V.

Page.

The equal protection of the laws is denied to railroad companies under said act because the protection which is extended by Section 14 of Art. XIV of the Constitution of Michigan to all other ad valorem taxpayers of the State is denied to railroad companies.....	62
--	----

VI.

Equal protection of the laws is denied to the railroad companies under said act, in that no provision is made for the equalization of the assessment of the property taxed under said act and the assessment of the other property of the State, in order to determine the rate of taxation imposed under said act.....	72
---	----

VII.

Said Act No. 173 denies to railroad companies the equal protection of the laws in this: Under the general laws of the State in the assessment of the personal property of the individuals, credits are assessed only to the amount that credits exceed the indebtedness of the party assessed, while under said act the railroad companies are assessed at the cash value of the full amount of their credits, no deduction being allowed on account of their indebtedness.....	106
---	-----

# VIII.

	Page.
The taxation under said Act No. 173 is not authorized by the power which is reserved to the State to alter, amend or repeal the statutes under which the railroad companies were organized.....	116
Appendix A, Act No. 173.....	118
Appendix B, Laws of Michigan relating to supplying cities and villages with water.....	137
Appendix C, Statute relating to Board of State Tax Commissioners .....	147
Appendix D, provisions for the assessment of property .....	157



# THE SUPREME COURT

## OF THE UNITED STATES.

---

THE MICHIGAN CENTRAL  
RAILROAD COMPANY

*vs.*

PERRY F. POWERS, Auditor  
General of the State of Mich-  
igan.

---

### BRIEF IN BEHALF OF THE COMPLAINANT.

---

The statute of Michigan under which the taxes which are the subject of this suit were levied is Act No. 173 of the Laws of 1901, the provisions of which involved in the suit are copied in Appendix A to this brief.

The following is a summary of its provisions:

It applies to railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies.

The State Board of Tax Commissioners are constituted a State Board of Assessors, whose duty it is to assess the property of the companies to which the act applies, at its true cash value, on the second Monday of April. On the third Monday of December the Board is to meet at the capitol at Lansing to review their assessment, and any company or person has the right to appear and be heard as to the valuation of the property of any company, and the Board may correct the assessment in such manner as in their judgment will make the valuation just and ~~equitable~~ <sup>equal</sup>.

The clerk of each county of the State, not later than the 1st of November, is to report to the State Board of Assessors the equalization made by the Board of Supervisors of the county of the assessment of the several townships, which report shall contain a statement of the amount of ad valorem taxes to be raised in the several municipalities in said county for state, county, municipal, township, school and other purposes, and a statement of the aggregate valuation of the property in each of said municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. The supervisor or other assessing officer of cities and villages governed by charters which provide for the collection of ad valorem taxes which are not reported to the board of supervisors for the purposes of equalization or review are to report to said board all ad valorem taxes raised in said municipalities.

After the receipt of said reports the State Board of Assessors "shall ascertain and determine the average rate of taxation of the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with

the method by which such average rate was ascertained and determined," and the "said Board shall tax the property of the several companies as assessed by it at the rate as determined by it."

The tax is to be extended upon the assessment roll opposite the descriptions of the property of the companies.

The taxes are made payable to the State Treasurer on the 1st of March following the levy. Taxes not paid before the 1st of April bear interest at the rate of one per cent a month, and are made a lien upon all the properties of the companies, real, personal and mixed, from the time of their extension until paid. The Board are required to annex their warrant to the roll commanding the Auditor General to collect the taxes by levy and sale of the property of the companies.

The statute provides that, "No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any Court of this State on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this state is in accordance with the constitution and statutes of this state."

The taxes are to be applied, "in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the

state debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund."

The State Board of Assessors proceeded under the act for the collection of the taxes for the year 1902, assessing the property of the companies at what they believed to be its true cash value. Acting under the provisions of said Section 12 of the act, to ascertain and determine the average rate of taxation for the year 1902 levied upon other property upon which ad valorem taxes were assessed for state, county, township, school and municipal purposes, they believed it to be their duty to determine whether such other property had been assessed at its true cash value, and proceeded accordingly and did ascertain and determine that such property had not been assessed by the assessors thereof at its true cash value, but that it had been assessed at greatly less than its true cash value, and determined the true cash value of said property to be the sum of \$1,715,000,000, making thereby the amount of the assessed valuation of said property as determined by them more than the amount of valuation as assessed by local assessors, as shown by the reports made to said Board by the clerks of the Boards of Supervisors, and by said determination the Board ascertained and determined the rate of taxation to be levied upon the properties of said companies to be \$13.68905 per thousand dollars of the said assessed valuation thereof, and levied said rate of taxation upon the property of said companies. The tax roll made upon that basis, with the proper warrant of the Board, was delivered to the Auditor General for collection. Thereupon application was made to the Supreme Court of the State by the Board of Education of the City of Detroit for a writ of Mandamus to said State Board of Assessors to require them to redeter-



mine the rate of taxation to be levied upon the property of said companies, by taking for such determination the assessed value of the other property as the same had been made by the local assessors.

The Supreme Court granted a Writ of Mandamus, holding that under the provisions of said Act 173 the said State Board of Assessors have no authority to thus equalize the assessment of said other property, and that their duty in determining the rate of taxation to be levied upon the property of said companies was to take the valuation of said other property *at the assessments made thereof by the local assessors*.

The Board of Education of Detroit vs. State Board of Assessors, 133 Mich., 116.

Acting under the direction of the Supreme Court, the State Board of Assessors re-determined the rate of taxation levied upon said other property for state, county, township, school and municipal purposes on the basis of said assessment of the said property made by the local assessors, and thereby made the rate of taxation to be levied upon the property of said companies \$16.55329 per thousand dollars upon the said assessed valuation thereof for said taxes; a new assessment roll was made by said Board with its proper warrant annexed thereto for the collection of said taxes, and was delivered to the Auditor General. To stay the collection of said taxes the suit is brought.

It is contended by the plaintiff that said taxes are unlawful and invalid, for the reason that said Act No. 173 and the proceedings taken to levy and collect the taxes, deprive the plaintiff of its property without due process of law, and deny to it the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment

to the Constitution of the United States, and that they also violate the provisions of the constitution of the State of Michigan.

Prior to bringing the suit, the plaintiff paid into the State Treasury the amount which would have been levied against the plaintiff for the taxes of the year 1902 under the laws providing for the taxation of railroad companies, as said laws existed prior to the adoption of said Act No. 173.

It is an admitted fact that the matter in dispute in the suit exceeds the sum of \$2,000, exclusive of interest and costs.

# I.

The Court has jurisdiction of the case to enjoin the collection of the taxes levied against the plaintiff's property.

1st. The case is within the decisions which hold that whenever an officer, by virtue of his position under a state government by his acts is doing that by which a person is deprived of life, liberty or property without due process of law, and is denied the equal protection of the laws, he acts without authority and the Federal Courts have jurisdiction over him personally to restrain his acts.

Prout vs. Starr, 188 U. S., 537, at 542, 543,

Smyth vs. Ames, 169 U. S., 466, at 518, 519,

Tindal vs. Wesley, 167 U. S., 204, at 220,

Chicago &c. R. R. Co. vs. Chicago, 166 U. S., 226, at 233, 234,

Scott vs. Donald, 165 U. S., 58, at 67, 68, 69, 70,

Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 362, at 389,  
390, 394, 395,

In re Tyler, 149 U. S., 164, at 190, 191,

Neal vs. Delaware, 103 U. S., 370, at 397,

Ex parte Virginia, 100 U. S., 339, at 346, 347.

2nd. Railroad companies are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, and the denial of the equal protection of the laws.

Covington & Lexington Turnpike Co. vs. Sandford, 164 U. S., 578, at 592,  
 Gulf &c. R. R. Co. vs. Ellis, 165 U. S., 150, 154,  
 Kentucky R. R. Tax Cases, 115 U. S., 321, at 336, 337,  
 Smyth vs. Ames, 169 U. S., 466, at 522.

3rd. By Section 13 of said Act 173 under which the tax is levied, the tax is made a lien upon all the property of the plaintiff, both real estate and personal property, and a warrant is attached to the tax roll by which the Auditor General is commanded to levy upon and sell the plaintiff's properties, both real and personal, to satisfy the taxes.

By these proceedings a cloud is cast upon the title to the plaintiff's real estate.

It is within the clearly recognized jurisdiction of the Federal Courts to restrain the collection of invalid taxes where by the provisions of the law under which they are levied *they become a lien upon the real property of the party against whom they are levied and a cloud upon his title.* It is within the equitable jurisdiction of the Court to remove clouds upon title to real property. The Court acts in such cases enjoining the collection of invalid taxes whereby proceeding to levy the tax a cloud is cast upon the title to real estate, and the remedy at law is held to be inadequate.

Union Pacific R. R. Co. vs. Cheyenne, 113 U. S., 516, at 525,  
 526,  
 Ogden vs. Armstrong, 168 U. S., 224, at 237, 238,  
 Wilson vs. Lambert, 168 U. S., 611, at 612,

Lyon vs. Alley, 130 U. S., 177, at 187,  
 Illinois Cent. R. R. Co. vs. Adams, 180 U. S., 28, at 35,  
 Northern Pacific R. R. Co. vs. Walker, 148 U. S., 391,  
 Lindsay vs. Shreveport Bank, 156 U. S., 485,  
 Allen vs. B. & O. R. Co., 114 U. S., 311,  
 Milwaukee vs. Koeffler, 116 U. S., 219, at 223, 225,  
 Dows vs. City of Chicago, 11 Wall., 108, at 110, 112,  
 Hannewinkle vs. Georgetown, 15 Wall., 547, at 548, 549,  
 Shelton vs. Platt, 139 U. S., 591, at 594, 595,  
 Cummings vs. National Bank, 101 U. S., 153, at 157,  
 Osborn vs. United States Bank, 9 Wheat., 738, at 841,  
 State Railroad Tax Cases, 92 U. S., 575, at 614,  
 Cooley on Taxation, p. 780-782 and Note (2nd Ed.)

The same equity jurisdiction has been maintained in the State of Michigan prior to the adoption of the recent statute of the state which provides for a proceeding in Court in which the taxpayer is brought into Court and has opportunity to defend before any sale of real estate can be made for the collection of taxes levied thereon.

Palmer vs. Rich, 12 Mich., 414, at 418, 419,  
 Scofield vs. City of Lansing, 17 Mich., 437, at 447, 448,  
 Hoyt vs. City of East Saginaw, 19 Mich., 39, at 47,  
 Kinyon vs. Duchene, 21 Mich., 498, at 501,  
 Bristol vs. Johnson, 34 Mich., 123, at 124,  
 Marquette &c. R. Co. vs. Marquette, 35 Mich., 504,  
 Frost vs. Leatherman, 55 Mich., 33, at 37,  
 Alger vs. Slaght, 64 Mich., 589, at 590.

4th. It has been contended in behalf of the defendant that the plaintiff has an adequate remedy at law, by payment of the taxes under protest to the Auditor General as collecting officer, and an action against him for recovery of the money paid, citing the following decisions:

Elliott vs. Swartwout, 10 Pet., 137.

Bend vs. Hoyt, 13 Pet., 263.

Greely vs. Thompson, 10 How., 225.

Philadelphia vs. The Collector, 5 Wall., 720.

Dows vs. City of Chicago, 11 Wall., 108.

Arkansas Building & Loan Association vs. Madden, 175 U. S.,  
269.

In all these cases the levy was made upon the personal property only, and there was no lien for the tax created by the proceedings upon the real property, and no cloud was cast on the title to real estate. Therefore the ground of the jurisdiction of a court of chancery in the removal of a cloud to title to real estate did not exist in the cases. The decisions have no application to the case at bar, in which the jurisdiction of the Court is based distinctly upon the ground of removal of cloud upon title to real estate, which by the terms of the statute and the proceedings to levy the tax is created upon the plaintiff's real property.

In no case, to our knowledge, in this Court, wherein it was sought to enjoin the collection of taxes upon the ground of prevention or removal of cloud upon the title to real property has jurisdiction been denied, where the amount involved in the suit was sufficient to give the Court jurisdiction.

In *Northern Pacific Railroad Co. vs. Walker*, 148 U. S., 391, a bill was filed in the Circuit Court of the United States against the county auditors of twelve counties, praying for a decree adjudging certain assessments and taxes levied upon lands in each of said counties to be illegal and void and a cloud upon the complainant's title, and that the defendants and each of them be restrained from selling or attempting to sell said lands, or any portion thereof.

The case proceeded to a decree dismissing the bill for want of equity, and was then carried by appeal to the Circuit Court of Appeals for the Eighth Circuit

Certain questions were certified by the Court of Appeals to the Supreme Court, and upon a certiorari the whole record was sent up to the Supreme Court for consideration. The latter Court disposed of the case, saying (page 392): "The record does not show that the amount of the assessments and taxes, forming the subject of the litigation, levied in either or all of the counties, exceeded the sum of \$2,000; and even if this had been so as to the aggregate, the defendants could not have been joined in a single suit, and the jurisdiction thus been sustained. Upon the face of the record, therefore, the Circuit Court was without jurisdiction. \* \* \* But as perhaps by amendment the bill might be retained as to some one of the defendants, we will not direct its dismissal."

The case was thereupon remanded to the Circuit Court, with a direction for further proceedings in conformity with the opinion.

In this case the Court distinctly recognized the jurisdiction of the Court to enjoin the collection of the taxes, on the ground of preventing or removing cloud upon title to lands, had the amount of the taxes in any county been sufficient to give the Court jurisdiction.

In *Lindsay vs. Shreveport Bank*, 156, U. S., 485, suit was brought in the United States Circuit Court of Louisiana, at law, to have the amount of the assessment of the shares of defendant's capital stock modified and reduced. The Circuit Court dismissed the suit upon the express ground that the remedy was in equity and not at law.

The cases above cited show that the Court has enjoined the collection of taxes where the general jurisdiction of the

Court was invoked to prevent a multiplicity of suits, and to prevent irreparable injury, and to remove a cloud upon the title to real estate.

5th. The statute under which the tax is levied does not provide any remedy at law by a payment of the tax under protest and suit to recover the money so paid.

The tax is a state tax, and by Section 13 of the statute is required to be paid to the State Treasurer, and goes into the treasury of the state. A suit to recover the money so paid would be a suit against the state, to recover moneys received by the State. It has been many times decided by the Supreme Court of the state that the state cannot be sued without its consent.

Auditor General vs. Bay County Supervisors, 106 Mich., 662, at 665,

Auditor General vs. Supervisors, 73 Mich., 182, at 183,

Auditor General vs. Treasurer, 73 Mich., 28, at 31,

Supervisors vs. Auditor General, 69 Mich., 1, at 4,

Supervisors vs. Auditor General, 68 Mich., 659, at 665,

Bresler vs. Butler, 60 Mich., 40, at 43,

Burrill vs. Auditor General, 46 Mich., 256, at 258,

Ambler vs. Auditor General, 38 Mich., 746, at 750,

Michigan State Bank vs. Hastings, Walk. Ch., 9, at 13,

Michigan State Bank vs. Hammond, 1 Doug., 527, at 536,

Board of Liquidation vs. McComb, 92 U. S., 531, at 541,

Railroad Co. vs. Tennessee, 101 U. S., 337, at 339,

Louisiana vs. Jumel, 107 U. S., 711, at 722-725,

Cunningham vs. Macon & C. R. C., 109 U. S., 446, at 450-456.

Article XIV, Section 5 of the Michigan State Constitution, provides that "No money shall be paid out of the treasury except in pursuance of appropriations made by law."

The money having gone into the state treasury by pay-



ment of the taxes it could not be paid out unless appropriation were made by the legislature for its payment.

*Reese vs. Walker*, 11 How., 372, at 383, 393.

The general statute of Michigan under which ad valorem taxes are levied upon the properties within the state, not included within said Act No. 173, contains a provision by which payment of such taxes may be made under protest to the collector and a suit be brought against the township to recover money so paid (1 Compiled Laws, 1897, Sec. 3876) but the provision applies only to taxes levied under such general statute, and does not apply to taxes levied under said Act No. 173.

*Taylor vs. Town of Avon*, 73 Mich., 624.

6th. It has been contended on the part of the defendant that the Court has jurisdiction only of the questions arising under the Constitution of the United States, and has not jurisdiction of the questions raised in the case under the constitution and statutes of Michigan independent of the Federal questions.

The case presented is that under the statute of Michigan and the proceedings to levy the tax the plaintiff is deprived of its property without due process of law, and is denied the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution.

There is no question but that the controversy thus presented under the constitution of the United States is real. In such case the Court has jurisdiction of the whole case, including the non-federal questions arising under the constitution and statutes of the state which do not involve the Federal questions, the appeal being from the Circuit Court

of the United States, and not from the Supreme Court of the state.

- 1 U. S. Comp. Laws, page 508, and Sec. 5, page 540.  
*Chappell vs. U. S.*, 160 U. S., 409, at 500.  
*Press Publishing Co. vs. Monroe*, 164 U. S., 105, at 110, 111.  
*Scott vs. Donald*, 165 U. S., 58, at 71-73.  
*Horner vs. United States*, 143 U. S., 570, at 576, 577.  
*Giles vs. Harris*, 189 U. S., 475, at 476.  
*Missouri vs. Dockery*, 191 U. S., 165, at 171.

7th. It has been the contention on the part of the defendant, that the railroad company has a remedy by paying the tax and then presenting its claim to the Board of State Auditors to obtain a return of the money.

To determine that the tax was invalid and that the money paid on account of the tax should be returned, would require a decision that the tax was levied in violation of the provisions of the Constitution of the United States, and contrary to the constitution of the state, and would be indisputably the exercise of judicial power.

- Daniel vs. People*, 6 Mich., 381, at 388.  
*Underwood vs. McDuffee*, 15 Mich., 361, at 368.  
*Risser vs. Hoyt*, 53 Mich., 185, at 193.  
*Cohens vs. Virginia*, 6 Wheat., 264, at 378, 384, 392.  
*Osborn vs. United States Bank*, 9 Wheat., 738, at 819.  
*Tennessee vs. Davis*, 100 U. S., 237, at 263, 264.  
*Starin vs. New York*, 115 U. S., 248, at 257.  
*Pacific Railroad Removal Causes*, 115 U. S., 2, at 11.

The judicial power of the state is exclusively vested in the Courts which are designated in the State Constitution by the following provisions, viz.:

"Article VI, Section 1. The judicial power is vested in one Supreme Court, in Circuit Courts, in Probate Courts

and in Justices of the Peace. Municipal Courts of civil and criminal jurisdiction may be established by the legislature in cities."

"Section 3. The Supreme Court shall have a general superintending control over all inferior courts, and shall have power to issue writs of error, habeas corpus, mandamus, quo warranto, procedendo, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only."

"Section 23. The legislature may establish courts of conciliation with such powers and duties as shall be prescribed by law."

"Section 27. The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases unless demanded by one of the parties in such manner as shall be prescribed by law."

The Supreme Court of the state has repeatedly decided that the judicial power of the state is vested in the Courts designated in the above provisions of the constitution.

*Chandler vs. Nash*, 5 Mich., 409, at 417.

*Risser vs. Hoyt*, 53 Mich., 185, at 192.

*State Tax-Law Cases*, 54 Mich., 393, at 408.

*People vs. Salisbury*, 134 Mich., 537, at 544.

In *Underwood vs. McDuffee*, 15 Mich., at page 368, Mr. Justice Campbell, delivering the opinion of the Court, says: "The judicial power, even when used in its widest and least accurate sense, involves the power to *hear and determine* the matters to be disposed of; and this can only be done by some order or judgment which needs no additional sanction to entitle it to be enforced. No action which is merely preparatory to an order or judgment to be rendered by some different body, can be properly termed judicial.

\* \* \* It is the inherent authority not only to decide, but to make binding orders or judgments, which constitutes judicial power; and the instrumentalities used to inform the tribunal, whether left to its own choice or fixed by law, are merely auxiliary to that power, and operate on persons or things only through its action, and by virtue of it."

In *State Tax-Law Cases*, 54 Mich., at page 408, Mr. Justice Campbell says: "And it must not be forgotten that whatever judicial power exists at all, is by the express terms of the Constitution of Michigan vested in the Courts, and cannot be taken away from them, while that which is not judicial they are as expressly debarred from exercising, and it must be vested elsewhere. Our Constitution is peculiar in prohibiting one department from using the powers of another. It is not in the power of the legislature to make that judicial which is not so by nature."

In *Chandler vs. Nash*, 5 Mich., Mr. Justice Christiancy, delivering the opinion of the Court, says (page 417): "Sec. 1, Article VI, of the Constitution, declares: 'The judicial power is vested in one Supreme Court, in Circuit Courts, in Probate Courts, and in Justices of the Peace. Municipal courts of civil and criminal jurisdiction may be established by the legislature in cities.' This, beyond all controversy vests the *whole* judicial power of the state in the Courts and officers named in this section, unless there be some further provision in the same Constitution, conferring upon some other Court or officer a part of such judicial power, or authorizing the legislature to confer it; and in the latter case, it can only be possessed or conferred by such further provision expressly, or by necessary implication, which would have the effect to take the case out of the general provision above quoted."

The following are the provisions of the Constitution relating to the State Board of Auditors, viz.:

"Article VIII, Section 1. There shall be elected at each general biennial election a secretary of state, a superintendent of public instruction, a state treasurer, a commissioner of land office, an auditor general, and an attorney general for the term of two years. They shall keep their offices at the seat of government and shall perform such duties as may be prescribed by law."

"Section 4. The secretary of state, state treasurer, and commissioner of the state land office shall constitute a board of state auditors to examine and adjust all claims against the state, not otherwise provided for by general law. They shall constitute a board of state canvassers, to determine the result of the elections for governor, lieutenant governor, and state officers, and all such other officers as shall by law be referred to them."

It was not the intention of the constitution to vest in this auditing board, composed of political officers, a judicial power to hear and determine a suit involving the constitutional questions presented in this case, and to render a judgment thereon against the state.

*Fitch vs. Board of Auditors*, 133 Mich., 178, at 183.

Whatever proceeding may be had before the board for auditing claims is in its nature a proceeding at law. No chancery jurisdiction is conferred upon the board. The constitution provides that the right of trial by jury shall remain to suitors. There is no provision by the constitution, or by any statute of the state for a jury to act upon claims presented to this board.

In respect to claims against the state, the power conferred by the constitution upon the board is the power of an auditing committee, for the examination and adjusting

of accounts or claims which, without judicial determination, are recognized as lawful. From the decisions of the board in allowing or disallowing claims against the state there is no appeal provided for by the constitution or the statute, and there is no supervision by the Supreme Court over the action of the board in such case, for the reason that the board is not a Court and its action is not the exercise of judicial power, and the discretion which it may exercise is not subject to control. This is fully established by the decisions of the Supreme Court.

*People ex rel Dewey vs. Board of State Auditors*, 32 Mich., 191,

*Ambler vs. Auditor General*, 38 Mich., 746, at 750, 751,

*Ayers vs. State Auditors*, 42 Mich., 422, at 428,

*Detroit Free Press vs. State Auditors*, 47 Mich., 135, at 144,

*Warner vs. Board of State Auditors*, 128 Mich., 500, at 501,

*Allen vs. Board of State Auditors*, 122 Mich., 324, at 328.

Where, by a statute, duties are imposed upon the board, other than the allowance of claims against the state, which duties are ministerial and to the performance of which parties are entitled, the Supreme Court may compel the board to act, but the power of supervision goes no further.

*Ayers vs. State Auditors*, 42 Mich., 422, at 428,

*Detroit Free Press vs. State Auditors*, 47 Mich., 135,

*Board of Park Commissioners vs. Common Council*, 28 Mich., 228, at 235,

*International Contracting Co. vs. Lamont*, 155 U. S., 303, at 308.

In *Fitch vs. Board of Auditors*, 133 Mich., 178, the legislature, by a joint resolution, created a board of auditors for auditing and allowing claims against two counties, and to apportion the claims to the counties for pay-

ment. The Court, holding the resolution unconstitutional, says (page 183): "The board of auditors created by this act are authorized to determine the validity and amount of claims presented to them, and to so apportion that amount that the property or taxpayers of said disorganized county must pay it. In other words, they not only make a binding determination, which is equivalent to a judgment, but they make an apportionment against the property or taxpayers without the sanction of a Court which is equivalent to an execution. This board of auditors does, in other words, all that a Court can do in the premises. The Constitution of Michigan, Article VI, Section 1, having vested judicial power in one Supreme Court, in the Circuit Courts, in Probate Courts, and in justices of the peace, clearly does not authorize the legislature to vest judicial power in tribunals of this character."

Whatever view may be taken of the power of the Board of State Auditors, or of any legal remedy which the plaintiff may have, it can not be deprived of the right to bring suit in the Federal Circuit Court under the Court's jurisdiction to remove the cloud upon the plaintiff's title to its real property.

The jurisdiction of the Federal Court is not affected by the fact that a legal remedy may exist in the State Court.

*Smyth vs. Ames*, 169 U. S., 466, at 516.

## II.

The provisions of the Fourteenth Amendment, forbidding the State to deprive any person of life, liberty or property without due process of law, or to deny any person within its jurisdiction the equal protection of the laws, apply to proceedings adopted by the State for the levy and collection of taxes.



Upon this point the decisions are numerous and harmonious.

No general definition has been adopted of a denial of the equal protection of the laws which is intended to define the cases which come within this provision of the constitution. Each case is left to be determined upon its own facts, and upon the statutes and proceedings in the different states under which the claim is made that the protection which is afforded to a part of the persons within the jurisdiction of the State is denied to others; but the decisions have declared certain definite principles which control the determination of the particular cases.

(a) The provision for the equal protection of the laws is to be liberally construed to carry out its purposes.

*Strauder vs. W. Virginia*, 100 U. S., 303, at 307.

*Boyd vs. United States*, 116 U. S., 616, at 635.

*Gulf & c. R. Co. vs. Ellis*, 165 U. S., 150, at 153, 154.

(b) Equal protection of the laws means the protection of equal laws.

The inquiry is not limited to the operation of a single law. The question is whether, under the different and several laws of the State, a protection of rights is afforded to a part of the persons within the state which is denied to others.

*Yick Wo vs. Hopkins*, 118 U. S., 356.

*Connolly vs. Union Sewer Pipe Co.*, 184 U. S., 540, at 559.

(c) The cases which have been passed upon by the Courts show that wherever provisions are made by the

laws of the state which give protection to one class of persons against the deprivation of life, liberty or property, and those provisions are withheld from other persons *who in like conditions and for the same reasons are in need of like protection*, there is class legislation which contravenes the equal protection of the laws.

Barbier vs. Connolly, 113 U. S., 27, at 31.

Hayes vs. Missouri, 120 U. S., 68, at 71.

Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, at 558,  
559, 560.

(d) The levy and collection of taxes by such class legislation is a denial of the equal protection of the laws.

Where by provisions of statutes which are designed for the personal protection of the taxpayer against the levy upon him of an unjust, unequal and heavier burden of taxation than he ought to bear, and the operation of which does give such protection to a portion of the taxpayers, but such provisions are withheld from other taxpayers who for the same reasons have need of and who would receive by such provisions like protection, and are subjected, or may be subjected to unjust, unequal and heavier taxation for want of such protection, a case is presented of the denial of equal protection of the laws.

It is recognized that inequalities will exist in taxation arising from the fact that it is not practicable to apply the same provisions of the tax law to all the different conditions arising in taxation and secure equal results.

Inequalities which arise from such causes are tolerated and submitted to, but inequalities in burdens of taxation imposed upon persons who are in like conditions, *and which inequalities arise from different provisions of the law itself, and can be foreseen and provided against*, con-

stitute discrimination which is a denial of equal protection.

Justice Field in Railroad Tax Cases, 13 Fed., 722, at 733, 734.  
 County of Santa Clara vs. Southern Pac. R. Co., 18 Fed., 385, at 398, 399,  
 Santa Clara County vs. So. Pacific R. Co., 118 U. S., 394, at 396,  
 Charlotte &c. R. Co. vs. Gibbes, 142 U. S., 386, at 391,  
 Kentucky R. R. Tax Cases, 115 U. S., 321, at 337,  
 Stearns vs. Minnesota, 179 U. S., 223, at 262,  
 Travellers' Ins. Co. vs. Connecticut, 185 U. S., 364, at 366,  
 Bell's Gap R. Co. vs. Pennsylvania, 134 U. S., 232, at 237,  
 Delaware, L. & W. R. Co. vs. Pennsylvania, 198 U. S., 341,  
 Louisville &c. Ferry Co. vs. Kentucky, 188 U. S., 385, at 398,  
 Gulf &c. R. Co. vs. Ellis, 165 U. S., 150, at 154,  
 Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, at 558, 563,  
 Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79, at 110.

(e) *If the probable effect of the provisions of the statutes of the state is to produce the discrimination against persons which the equal protection of the constitution forbids, taxation by which such discrimination is made is unlawful.*

San Francisco National Bank vs. Dodge, 197 U. S., 70, at 78,  
 Davenport Bank vs. Davenport, 123 U. S., 83, at 86,  
 People vs. Weaver, 100 U. S., 539, at 544,  
 Pelton vs. National Bank, 101 U. S., 143, at 145, 146,  
 Cummings vs. National Bank, 101 U. S., 153, at 157,  
 Hills vs. Exchange Bank, 105 U. S., 319.

(f) Under the Fourteenth Amendment the method for the assessment and collection of taxes provided by the State shall not be inconsistent with natural justice.

Turpin vs. Lemon, 187 U. S., 51, at 60.

## III.

The equal protection of the laws is denied to the railroad companies in the provisions of said Act No. 173, by which the amount of taxes imposed upon them is determined.

1st. The provision of the statute is that "the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes," and, "said Board shall tax the property of the several companies as assessed by it at the rate as determined by it."

To thus determine the rate of taxation, the Board is to ascertain the total sum of all taxes of the then current year levied upon other property for state, county, township, school and municipal purposes, and the total sum of the assessed value of such other property for the year, and divide the former sum by the latter, and thus determine the rate.

In this manner the amount of the tax to be levied upon the railroad companies is determined by the amount of taxes which the counties, towns, school districts, cities and villages, by their action, shall determine to be raised for their local municipal purposes, *in addition to the amount which the State determines to raise in the same year for state purposes.*

2nd. A protection is furnished to other taxpayers of the state by the laws which provide a legislative determination, or judgment of the amount of taxes which ought to be imposed upon them, which determination or judgment is formed upon the consideration of the needs of the state,

or of the municipality, for which the taxes imposed are to be devoted, and the amount of the taxation required to provide for such needs, while such protection is withheld from the companies subjected to taxation under said Act No. 173.

*The determination of the amount of taxes to be raised in any case, or for any purpose is a legislative determination.* Taxes for state purposes are determined by the legislature; taxes for municipal purposes, including the purposes of counties, townships, school districts, cities and villages, are determined by the action of the boards, officials, councils or electors upon whom is conferred by the legislature of the state power to decide for what purpose and to what amount taxes may be raised.

In every case it is a determination by legislation made in view of the public or the municipal interests, and of the amount of taxes required to provide for those interests, and this legislative power is exercised by the officers chosen by and who represent those directly interested in the district taxed, or by the electors of the district.

In this manner other taxpayers of the state not subjected to taxation under said Act No. 173 are protected by the principle everywhere recognized as fundamental, viz.: the principle of self-taxation by the legislative action of representatives who are directly responsible to the taxpayers of the district in which the taxes are levied. *This is especially the fundamental principle of taxation in the State of Michigan.*

Cooley on Taxation, 61, 62, 63, 141, 142, 241, 242, (2nd Ed.)

Board of Park Commissioners vs. Detroit, 28 Mich., 228,  
at 236, 241, 248,

Metropolitan Police vs. Board of Auditors, 68 Mich., 576,  
at 579,

Blades vs. Water Commissioners, 122 Mich., 366, at 379.

Wilcox vs. Paddock, 65 Mich., 23, at 29,  
 People vs. Hurlbut, 24 Mich., 44, at 87, 95.  
 Cook Farm Co. vs. City of Detroit, 124 Mich., 426, at 429.  
 Attorney General vs. Detroit Common Council, 58 Mich.,  
 213, at 219, 220,  
 United States vs. New Orleans, 98 U. S., 381, at 392,  
 State Railroad Tax Cases, 92 U. S., 575, at 615,  
 Heine vs. Levee Commissioners, 19 Wall., 655,  
 Meriwether vs. Garrett, 102 U. S., 472, at 501, 515,  
 Thompson vs. Allan County, 115 U. S., 550, at 555,  
 Harward vs. St. Clair Drain Co., 51 Ill., 130, at 133, 134, 135,  
 Parks vs. Board of Commissioners, 61 Fed., 436, at 437, 438.

Cooley on Taxation (2nd Ed.) pp. 61, 62, 63 and 65, says (pp. 61, 62) : "It is a general rule of constitutional law that a sovereign power conferred by the people upon any one branch or department of the government is not to be delegated by that branch or department to any other."

"This is a principle which pervades our whole political system, and when properly understood, admits of no exception. And it is applicable with peculiar force to the case of taxation. The power to tax is a legislative power. The people have created a legislative department for the exercise of the legislative power; and within that power lies the authority to prescribe the rules of taxation, and to regulate the manner in which those rules shall be given effect. The people have not authorized this department to relieve itself of the responsibility by a substitution of other agencies."

(Page 63) : "There is, nevertheless, one clearly defined exception to the rule that the legislature shall not delegate any portion of its authority. The exception, however, is strictly in harmony with the general features of our political system, and it rests upon an implication of

popular assent which is conclusive. This exception relates to the case of municipal corporations. Immemorial custom, which tacitly or expressly has been incorporated in the several State Constitutions, has made these organizations a necessary part of the general machinery of State government, and they are allowed large authority in matters of local government, and to a considerable extent are permitted to make the local laws."

(Page 65): "What is true of the State is equally true of the municipalities; that the power they possess to tax must be exercised by the corporation itself and cannot be delegated to its officers or other agencies. This rule applies to whatever is to be done which is legislative in its nature and involves the exercise of discretion, and a city, therefore, cannot delegate to an administrative officer the plan and extent of a municipal improvement for which it orders a tax, and if it should assume to do so, mere acts in affirmance afterwards would not supply to the officer the want of authority."

In *United States vs. New Orleans*, 98 U. S., 381, at page 392, the Court, by Mr. Justice Field, says: "The position that the power of taxation belongs exclusively to the legislative branch of the government, no one will controvert. Under our system it is lodged nowhere else. But it is a power that may be delegated by the legislature to municipal corporations, which are merely instrumentalities of the State for the better administration of the government of local concern."

In *Board of Park Commissioners vs. Detroit*, 28 Mich., 228, the legislature created a board, with power to select lands for a park for the City of Detroit, and to make estimates of expenditures annually for the improvement



and embellishment of the park. By the act the council of the city was required to provide for such expenditures by an issue and sale of bonds of the city. The Supreme Court held the act void upon the ground that it deprived the city of the power of local self-government in matters of local concern involving taxation. Mr. Justice Cooley, delivering the opinion of the Court, (page 248) says:

"In making contracts and creating debts for the city, the commissioners are in effect exercising a power of taxation, which is one of the highest attributes of sovereignty, and the distance between their former power to advise, and the power now claimed to compel, can only be adequately measured when it is perceived that the one belongs to the lowest grade of powers, while the power to tax is the highest that can exist in local municipal government. *No precedent entitled to respect can justify such a change of powers;* for, from the very dawn of our liberties the principle most unquestionable of all has been this: that the people shall vote the taxes they are to pay, or be permitted to choose representatives for the purpose." (The italics are ours).

In Metropolitan Police vs. Board of Auditors, 68 Mich., 576, Mr. Justice Campbell delivering the opinion of the Court (page 579) says:

"Under our system we can have no governments, general or special, that do not immediately represent a popular constituency, and no properly called governmental power can be lodged anywhere else. Our State Constitution has provided for local municipalities, embracing counties, cities, villages, townships and school districts, which it has been held mean such bodies of those names as were of a nature familiar and understood. The Legislature has power to confer upon townships, cities, villages and boards

of supervisors, local legislative and administrative powers such as are suited to their condition. But there is no other power mentioned in the Constitution for conferring similar public governing authority elsewhere, and these bodies are all created by popular elections. It was held in *Attorney Gen. vs. Detroit Common Council*, 58 Mich., 213, (24 N. W., Rep. 887), that the people could not be subjected to any delegated powers of government not exercised by their own representatives."

In *Blades vs. Water Commissioners*, 122 Mich., 366, the Legislature designated a board with power to annually estimate and report to the Common Council of Detroit the amount deemed by them a just proportion for the support of water works, and provided that such amount be assessed and levied upon the taxable property of the city, without submitting to the Board of Estimates of the city, or the taxpaying electors the question of levying such taxes. The act was held void by the unanimous opinion of the Supreme Court, delivered by Mr. Justice Grant, who uses the following language (pages 379, 380) :

"The method provided by this act for the support and maintenance of the waterworks is unconstitutional and void. While the provisions of the act are somewhat incongruous, it is apparent that it imposes compulsory taxation for purely local purposes. The board established by section 10, to fix water-rates, is also, by section 9, directed to prepare and transmit to the common council an estimate of the amount they deemed a just proportion of the total estimate for maintenance as a reasonable charge for furnishing water for domestic and other purposes therein specified. It is then made the duty of the common council to levy and assess upon the taxable property of the city the sum so fixed, and that it shall not be submitted to the

board of estimates or to a vote of the freemen of the city. The furnishing of water to the city and its inhabitants is a purely local matter, and it is not within the power of the legislature to compel taxation for that purpose, without the action of the freemen of the city or their chosen representatives. This question was fully and ably discussed in *People vs. Common Council of Detroit*, 28 Mich., 228 (15 Am. Rep., 202), which is the leading case in this state upon the subject. In an exhaustive opinion by Justice Cooley, where the attempt was made by the legislature to impose compulsory taxation for the maintenance of a park, he closes his discussion with the following pertinent language: 'No precedent entitled to respect can justify such a change of powers; for, from the very dawn of our liberties, the principle most unquestionable of all has been this: That the people shall vote the taxes they are to pay, or be permitted to choose representatives for the purpose.' "

"In a concurring opinion, Mr. Justice Campbell said:

" 'From time immemorial, every municipal government, properly so-called, and acting within its peculiar sphere, has acted through its common council, composed either of the burgesses or their representatives, subject in some cases to checks and vetoes, but not subject to legislation or final action in defiance of their own decisions. Their supremacy cannot be given up by themselves any more than it can be taken from them. No doubt the State can limit their powers, but it cannot transfer them.' "

"The question is there so thoroughly discussed that we deem it unnecessary to further consider the question."

In *Meriwether vs. Garrett*, 102 U. S., 472, Mr. Justice Field, at page 515, says:

"The levying of taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, *to be performed only by the legislature upon considerations of policy, necessity, and the public welfare.* In the distribution of the powers of government in this country into three departments, the power of taxation falls to the legislative. It belongs to that department to determine what measures shall be taken for the public welfare, and to provide the revenues for the support and due administration of the government throughout the State and in all its subdivisions. Having the sole power to authorize the tax, it must equally possess the sole power to prescribe the means by which the tax shall be collected, and to designate the officers through whom its will shall be enforced."

In *Harward vs. St. Clair Drain Co.*, 51 Ill., 130, at page 135, the Court uses the following language:

"The power of taxation is, of all the powers of government, the one most liable to abuse, even when exercised by the direct representatives of the people, and if committed to persons who may exercise it over others without reference to their consent, the certainty of its abuse would be simply a question of time. No person or class of persons can be safely entrusted with irresponsible power over the property of others, and such a power is essentially despotic in its nature, and violative of all just principles of government."

In *Parks vs. Board of Commissioners*, 61 Fed., 436, the Court uses the following language (page 438):

"Self-taxation, or taxation by officers chosen by or answerable to those directly interested in the district to be taxed, is inseparable from that protection of the right of property that is either expressly or impliedly guaranteed

by all written constitutions, under our system of government. Of all the powers of government the one most liable to abuse is the power of taxation. If placed in hands irresponsible to the people of the district to be taxed, its abuse is a mere question of time. If taxes may be forced on the people of a whole county, arbitrarily, by a few people signing a petition, it is plain that the people of the county, being the district to be taxed, have no voice in or control over the tax. There is no limit to the cost of these improvements, and the taxpayer is absolutely without means to check or control abuses that naturally follow arbitrary and irresponsible power over the property of others."

3rd. The proceedings to determine the ad valorem taxes to be paid by persons, whether natural or artificial, which are not included in Act No. 173, are the following:

(a) The amount of State tax is determined by the legislature.

Constitution, Art. XIV, Secs. 1 and 14.

(b) The amount of the county tax is determined by the Board of Supervisors, and the electors of the county.

Constitution, Art. X, Sec. 1,

1 Comp. Laws of 1897, Sec. 2484.

(c) The township taxes are determined by the electors of the township and the township board.

1 Comp. Laws, Secs. 2269, 2349.

(d) The amount of school district taxes is determined by the electors of the district or the school district board.

2 Comp. Laws, Secs. 4665, 4674.

(e) The amount of city and village taxes is determined by the city and village councils, or the electors of the cities and villages, as provided by their special charters, or the general law for the incorporation of cities and villages.

Constitution, Art. IV, Sec. 38,

Art. XV, Sec. 13,

1 Comp. Laws, Secs. 3290 to Sec. 3308 (as to cities),

1 Comp. Laws, Sec. 2852 to 2857, and Sec. 2873 (as to villages).

There being no dispute in reference to the points above cited upon the provisions of the constitution and statutes, the printing of them is not deemed necessary.

4th. In respect to all the above taxes, the amount is determined by the authorities imposing the tax by taking into account, first, *the public needs for which taxation is required to be made*, and, second, *the amount of money which ought to be raised to provide for those needs*.

*There is an exercise of the judgment of those who are representatives of the taxpayers of said taxes in respect to the amount of taxes which ought to be raised, to provide for those interests for which the taxes are imposed.*

In this manner the taxpayers are protected against arbitrary taxation and against taxation which is not, or may not be required to provide for such needs of the public as exist at the time the amount of the taxes is fixed upon.

5th. This protection granted under the laws to the other taxpayers of the State who are not taxed under said Act 173, both natural persons and corporations, is denied to the railroad companies by their taxation under said Act.

The tax levied upon the railroad companies is strictly a State tax, imposed for State purposes, *yet the legislature does not determine the amount of the tax, nor is it determined by any legislative action which considers the subject of the tax, nor is it determined by representatives who are responsible for their action to the stockholders of the railroad companies, who are the real taxpayers of the tax.*

6th. The legislature, by said Act, does not determine the amount of the tax.

To determine the amount of a tax is to designate the gross amount in money, in dollars, to be raised, or it is to determine the rate of taxation by stating the amount in cents, or in fractions of cents on the dollar of the value of the property to be taxed.

*This is the determination which is made in respect to all ad valorem taxes raised in the state imposed in all cases which are not levied under said Act 173.*

Said act, instead of determining the tax by stating the amount in money to be raised, or the rate upon the dollar of taxation, distinctly and only *designates a method by which the rate is to be determined.*

That method makes the determination by the various county, township, school district, city and village electors, boards and councils, of what the taxation in those municipalities shall be, the determination also of what shall be the rate of taxation of the railroad companies.

In this action of the municipal authorities, by which, in determining their own taxation, they determine the taxation of the railroad companies, no account whatever is taken, or can be taken, of the needs of the public in



respect to the purposes to which the taxes which their action imposes upon the railroad companies are to be devoted.

They do not consider that essential and fundamental feature of taxation.

The result is, the determination of the amount of tax to be paid by the railroad companies is, in respect to the action of the legislature, arbitrary; it is distinctly the result of chance, depending upon conditions, circumstances and actions of the municipalities which have no relation whatever to the purposes for which taxes are imposed upon railroad companies.

Every tax, for whatever purpose raised by a county, city, village, township or school district constitutes an act by the municipality in the determination of, and adds to the tax which the railroad companies must pay for a purpose which has no relation to the purposes for which such municipal tax was raised.

7th. Especial attention is called to the fact that the amount of the tax imposed upon railroad companies is not determined by the average rate of taxation levied upon other property for **GOVERNMENTAL PURPOSES**, and which amount and rate are under the control of the legislature.

The amount of tax to be imposed upon railroad companies is the average rate of taxation levied upon other property for "state, county, township, school and municipal purposes;" that is, taxes levied both for governmental purposes, and for the local, particular and individual purposes, convenience and enjoyment of the several municipalities.

These latter taxes constitute a very large part of the total which makes the average rate of taxation. The expenditures for which such taxes are levied are made entirely in the discretion of the municipalities.

To the extent that the rate of taxation laid upon the railroad companies is made up of the tax levied in the municipalities, other than for governmental purposes, *it is determined by the discretion and legislative determination of the municipal authorities which determine what the local expenditures and taxation shall be.*

*It is the discretion and legislative action of those authorities which determine the rate of taxation of the railroad companies.*

8th. It is clearly established law that municipal corporations are created for the general purposes of government, in which capacity their action is subject to the control of the legislature.

They are also granted powers which they exercise for the benefit of their own citizens. The exercise of these powers is discretionary with them, and they are not subject to the control of the legislature. In the exercise of those powers they act in the capacity of private corporations.

It is in the exercise of these powers, and in their character of private corporations, that they provide for the local conveniences for their citizens in furnishing water, light, sewerage, fire protection, public grounds, parks, fountains, adornments, paved streets, water works for private as well as public use, electric light plants for private as well as public lighting, and various other conveniences.

- Cooley on Taxation, pp. 688, 689, (2nd Ed.),  
 Board of Park Commissioners vs. Common Council of Detroit,  
 28 Mich., 228, 236, 241,  
 Attorney General vs. Burrell, 31 Mich., 25, at 34, 35,  
 Davock vs. Moore, 105 Mich., 120, at 128, 132,  
 Cook Farm Co. vs. City of Detroit, 124 Mich., 426, at 429,  
 Ill. Trust & Savings Bank vs. City of Arkansas City, 76 Fed.,  
 R. 271, at 282 (C. C. A.),  
 People vs. Coler, 166 N. Y., 1,  
 People vs. Batchellor, 53 N. Y., 128, at 141,  
 Bailey vs. Mayor, 3 Hill, 531, at 539,  
 Safety &c. Co. vs. Mayor of Baltimore, 66 Fed., 140, at 143,  
 144 (C. C. A.).

Cooley on Taxation, pages 688, 689, says:

"They have thus their public or political character, in which they exercise a part of the sovereign power of the State for governmental purposes, and they have their private character, in which, for the benefit or convenience of their own citizens, they exercise powers not of a governmental nature, and in which the state at large has only an incidental concern, as it may have with the action of private corporations. It may not be possible to draw the exact line between the two, but provisions for local conveniences for the citizens, like water, lights, public grounds for recreation, and the like, are manifestly matters which are not provided for by municipal corporations in their political or governmental capacity, but in *quasi* private capacity in which they act for the benefit of their corporators exclusively. In their public, political capacity, they have no discretion but to act as the State which has created them shall, within constitutional limits, command, and the good government of the State requires that the power should at all times be ample to compel obedience, and that it should be capable of being promptly and effi-

ently exercised. In the capacity in which they act for the benefit of their corporators merely, there would seem to be no sufficient reason for a power in the State to make them move and act at its will, any more than in the case of any private corporation."

In *Board of Park Commissioners vs. Common Council of Detroit*, 28 Michigan, Mr. Justice Cooley, at page 236, uses the following language:

"In all matters of general concern there is no local right to act independently of the State; and the local authorities cannot be permitted to determine for themselves whether they will contribute through taxation to the support of the State government, or assist when called upon to suppress insurrections, or aid in the enforcement of the police laws. Upon all such subjects the State may exercise compulsory authority, and may enforce the performance of local duties, either by employing local officers for the purpose, or through agents or officers of its own appointment. The same doctrine was declared in *People vs. Mahaney*, 13 Mich., 481, and in *Bay City vs. State Treasurer*, 23 Mich., 503. It was also recognized in the statement that in the levy of taxes for purposes of general concern, the municipal bodies cannot demand a right to be consulted, and their consent is immaterial. And we concur fully in the views which have been expressed by other Courts in the cases to which our attention was called on the argument, that as regards duties which the people in the several localities owe to the commonwealth at large, they can not be allowed a discretionary authority to perform them or not as they may choose. Such an authority would be wholly inconsistent with anything like regular or uniform government in the State."

"But we also endeavored to show in *People vs. Hurlbut*,

that though municipal authorities are made use of in State government, and as such are under complete State control, they are not created exclusively for that purpose, but have other objects and purposes peculiarly local, and in which the State at large, *except in conferring the power and regulating its exercise*, is legally no more concerned than it is in the individual and private concerns of its several citizens."

And at page 241, he says:

"It is as easy to justify on principle, a law which permits the rest of the community to dictate to an individual what he shall eat, or what he shall drink, and what he shall wear, as to show any constitutional basis for one under which the people of other parts of the State, through their representatives, dictate to the City of Detroit, what fountains shall be erected at its expense for the use of its citizens, or at what cost it shall purchase, and how it shall improve and embellish a park or boulevard for the recreation and enjoyment of its citizens. The one law would rest upon the same fallacy as the other, and the reasons for opposing and contesting it would be the same in each case."

In *Attorney General vs. Burrell*, 31 Mich., at page 34, Justice Cooley says:

"Suppose some fine natural park, embracing unusual features of beauty and attraction, to be found within the limits of a township otherwise in its appearance monotonous and uninviting, which for a small sum might be purchased for the enjoyment of its inhabitants in perpetuity; can provision for such enjoyment be considered so entirely foreign to the purposes for which townships exist, and to the powers committed to them for exercise, as to render it necessary for the inhabitants to ask and

obtain special legislative permission before appropriating for themselves and their posterity the continuous benefits which such a park might afford them? We think not."

"In *The People vs. The Common Council of Detroit*, 28 Mich., 228, the nature of the ownership which municipal corporations have in their parks and commons was considered, and was declared to be analogous to the ownership of private persons."

In *Illinois Trust and Savings Bank vs. Kansas City*, 76 Fed., Judge Sanborn, delivering the unanimous opinion of the Circuit Court of Appeals, says, page 282:

"A city has two classes of powers—the one legislative, public, governmental, in the exercise of which it is a sovereignty and governs its people; the other proprietary, *quasi* private, conferred upon it, not for the purpose of governing its people, but for the private advantage of the inhabitants of the city and of the city itself as a legal personality. In the exercise of the powers of the former class it is governed by the rule here invoked. In their exercise it is ruling its people, and is bound to transmit its powers of government to its successive sets of officers unimpaired. But in the exercise of the powers of the latter class, it is controlled by no such rule, because it is acting and contracting for the private benefit of itself and its inhabitants, and it may exercise the business powers conferred upon it in the same way, and in their exercise it is to be governed by the same rules that govern a private individual or corporation." (Citing numerous cases.) "In contracting for water works to supply itself and its inhabitants with water, the city is not exercising its governmental or legislative powers, but its business or proprietary powers. The purpose of such a contract is not

to govern its inhabitants, but to obtain a private benefit for the city itself and its denizens."

In *Safety etc., Co. vs. Mayor of Baltimore*, 66 Fed., 140, at 143, Circuit Judge Simonton, delivering the opinion of the Circuit Court of Appeals, says as follows:

"It seems to be a contradiction in terms to speak of a contract revocable at the will of one of the contracting parties. Be this as it may, municipal corporations, confining the term to cities and towns, possess a double character,—the one governmental, legislative, or public, the other in a sense proprietary or private. In its governmental or public character the corporation is made by the State one of its instruments, the local depository of certain limited and prescribed political powers to be exercised for the public good on behalf of the State, and not for itself. These legislative or governmental powers they cannot cede away or control or embarrass by any contract disabling them from performing their public duties. *Western Saving Fund Soc. vs. City of Philadelphia*, 31 Pa. St., 182. Such contracts necessarily are void *ab initio*. They are not within the scope of the powers of the corporation. But in its proprietary or private character, the powers are conferred on the municipal corporation, not from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct legal personality. As to such powers, and as to the property acquired thereunder, and the contracts made with reference thereto, *the corporation is to be regarded quoad hoc a private corporation.*"

9th. The following are some of the special provisions, by which municipalities may expend money by taxation for the convenience and enjoyment of their inhabitants, which are in



addition to the provisions of the various city charters, which charters have very liberal provisions, according to the desires and wishes of the different localities for the expenditure of money to provide for the convenience and enjoyment of the inhabitants:

(a) Cities and villages may purchase, construct and maintain waterworks to supply the inhabitants with pure water, and to extinguish fires, *and also for ordinary and extraordinary uses of the inhabitants, and for such other purposes as the council may prescribe.*

1 Comp. L., Secs. 2890, 2891, 3247, 3248, 3416.

(b) Cities and villages may purchase, construct, operate and maintain works for supplying the cities and villages, and their inhabitants, with gas, or electric, or other lights.

1 Comp. L., Secs. 3440, 3437.

(c) Cities and villages may purchase the rights of any toll road companies to maintain gates and collect tolls on any streets or highways of cities and villages.

1 Comp. L., Sec. 3446.

(d) Cities and villages may establish and maintain fire departments, and for that purpose purchase and acquire property, buildings, engines and apparatus, sink wells, construct cisterns and reservoirs.

1 Comp. L., Secs. 2878, 2879, 2880, 3277, 3278, 3279.

(e) Cities and villages may purchase, acquire and maintain parks, public grounds, buildings and markets, and may light and ornament the public grounds and parks.

1 Comp. L., Secs. 2772, 3152, 3154.

(f) Townships, like cities and villages, may purchase and maintain parks.

Attorney General vs. Burrell, 31 Mich., 25, at 34, 35.

(g) Cities may establish and maintain public libraries and reading rooms.

1 Comp. L., Sec. 3107, Subd. 38, Sec. 3449.

(h) Villages and townships may establish and maintain libraries.

1 Comp. L., Sec. 3458.

(i) School Districts may establish and maintain libraries.

2 Comp. L., Secs. 4757, 4763.

(j) Cities, villages and townships may erect soldiers' monumental buildings for the use and enjoyment of their inhabitants.

1 Comp. L., Secs. 1700, 1702.

(k) Cities and villages may purchase, maintain and adorn cemeteries.

1 Comp. L., Secs. 2824, 3132, 3133.

(l) Cities, townships and villages, in addition to the taxation which they may impose for their conveniences, are made liable for damages suffered by parties in their person and property by reason of the failure of the cities, townships and villages, respectively, to maintain streets, sidewalks and bridges in a condition reasonably safe for the use of the public.

1 Comp. L., Secs. 3441, 3442.

It is well known that the amounts of claims arising under this liability of cities, villages and townships which go into judgment against them constitute very large

amounts which enter in and make a part of the taxation for municipal purposes upon which the rate of taxation of railroad companies is based, so that the railroad companies are in fact taxed not only because of the money expended by the different municipalities for the simple convenience and enjoyment of their inhabitants, *but also because of the negligence of the municipalities to keep and perform the duties which are imposed upon them toward the public.*

(For the above statutes, reference is made to Appendix B hereto).

All the various properties acquired by cities, villages and townships for the benefit, convenience and enjoyment of their inhabitants *are investments*, and they are owned, held and maintained by the municipalities in their private character as the property of private corporations.

Mayor vs. Park Commissioners, 44 Mich., 602, at 604.

Mt. Hope Cemetery vs. Boston, 158 Mass., 509, 519.

33 N. E., 695.

Chicago etc., R. Co. vs. Chicago, 166 U. S., 226, at 239.

Under said Act No. 173, whenever any of the municipalities tax their own inhabitants for the purpose of making such investments and providing, maintaining, embellishing, or adorning any of these properties, their action determines and imposes taxation upon the railroad companies, *although in such action no consideration is taken, or can be taken, either of the amount of such taxation, or the purpose to which it is to be applied, or of the extent of the burden which is imposed upon the companies, nor of the justice or injustice of imposing such burden upon the companies.*

No power is given to the railroad companies to protect themselves in any manner against the unwisdom or needlessness of the taxation by which they are themselves subjected to the burden caused by such action of the municipalities.

In principle it is the same as if the taxation of railroad companies was to be determined by the average expenditure made by the farmers of the State in maintaining and improving their farms, or by the average expenditures of the various manufacturing corporations of the State in the maintenance and improvement of their plants.

The Chicago & Northwestern Railroad Company, and other companies whose railroads and properties are in the Upper Peninsula, do not extend into the Lower Peninsula and have no property therein, and no representation in any of the municipalities in the Lower Peninsula. The amount of their taxation depends upon the amount which the various municipalities in the Lower Peninsula shall be liable for on account of their negligences, and shall expend in parks, public grounds, libraries, reading rooms, monumental buildings, fountains, markets and other embellishments, as well as for the conveniences of light, water, fire protection, sewerage, and other works which are for the benefit and enjoyment of the inhabitants of those municipalities, and which are not for the governmental purposes of the State.

When Detroit expends one hundred thousand dollars for the embellishment of Belle Isle Park, and the City of Saginaw, in constructing a bridge, expends one hundred thousand dollars extra for a bridge which shall be an ornament to the city, those cities determine that the railroads are to be taxed in an amount of moneys proportionate to the amount raised by such taxation, to be devoted to the purposes named in said Act No. 173.

All the railroad companies are situated and affected in like manner in respect to the action of the municipalities which determine the amount of the taxation of the companies.

Each one of them extends into only a small portion of the municipalities of the State, and its tax is determined by the action of the municipalities, which action can in no way be influenced by the companies or their stockholders. The Pere Marquette Railroad reaches many portions of the State, but extends into only a part of the municipalities of the Lower Peninsula, and into no municipalities of the Upper Peninsula.

10th. The moneys raised by taxation under said Act, go into the state treasury and are distributed among the municipalities to defray the expenses of the public schools.

1 Comp. L., Sec. 3350,

2 Comp. L., Sec. 4642.

The fact that the more the municipalities expend for local purposes the greater will be the fund in their treasuries from the taxation of the railroad companies to lessen the local taxes for school purposes *is an inducement and an influence for generous and extravagant expenditures by the authorities of the municipalities for their various local purposes.*

It is submitted that this method for the assessment and taxation of railroad companies is "inconsistent with natural justice."

It is not a question here, in determining the validity of the act, of the extent to which the taxation imposed upon

the railroad companies for the year 1902 is made up of the action of the municipalities above referred to.

The validity of the act is not determined by what is done in the particular instance under it; it is to be determined by what may be done by the authority of the act.

Stuart vs. Palmer, 74 N. Y., 183, 188,

Gulf &c. R. R. Co. vs. Ellis, 165 U. S., 150, at 153, 154.

In this last case, referring to the equal protection of the laws, the Court says (pp. 153, 154) :

"The matter of amount does not determine the question of right, and the party who has a legal right may insist upon it, if only a shilling be involved. As well said by Mr. Justice Bradley, in *Boyd vs. United States*, 116 U. S., 616, 635: 'Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property *should be liberally construed*. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.'"

11th. It is said that the Legislature determines the amount of the tax of the railroad companies by this act, as the Legislature would do if, after the municipalities had levied their taxes and the average rate of their taxation had become known, the Legislature should meet from year to year and adopt that rate and direct it to be levied upon the railroad companies.

Most clearly this is error.

If the average rate were determined and reported to or known by the Legislature, and the Legislature should then by an act adopt that rate, and direct it to be levied upon the railroad companies, the Legislature would deal with a definite rate and would then determine, in view of the public needs for which taxation upon the companies was to be imposed, whether the sum to be produced by that rate was required for those needs, and whether the rate ought justly to be laid upon the companies.

The rate to be levied upon railroad companies would then be determined by the Legislature by its own independent, legislative action, dealing with and considering a definite specific rate and by deciding whether such rate was a proper rate, precisely as it would do in fixing a rate where there had been no action taken by the municipalities in reference to their local affairs.

The expenditures of the municipalities for local purposes differ from year to year, and the average rate of their taxation from year to year, or for any year cannot be foreseen; therefore the action of the Legislature in directing that a rate of taxation which shall thereafter be determined by the action of the municipalities shall be levied, is in no sense such a determination of the rate of taxation by the Legislature as it would be if the Legislature by an act fixed a definite rate, which rate was known to the Legislature at the adoption of the act.

Under the action of the Legislature in determining whether it would adopt as the rate of taxation of the railroad companies for any year the average rate of taxation of the municipalities for that year, *the railroad companies and their stockholders would have the right to appear and to be heard by the Legislature in reference to such rate.*



This right of hearing is a fundamental and constitutional right of the taxpayers, whenever legislative action is taken to determine the rate of taxation, and of this right they are deprived under the provisions of said Act 173.

The right of the taxpayers to a hearing before the Legislature when action is taken by that body to determine the amount or rate of taxation to be imposed is discussed in the next division of this brief, at page —52

#### IV.

The determination of the rate of taxation of the railroad companies by the action of the municipalities, and not by the Legislature, violates the requirement of due process of law in the taxation of the railroad companies.

1st. The principles of due process of law as defined by this Court in respect to taxation, require that the process shall be pursued in the ordinary mode prescribed by law, be just to the parties affected, be adapted to the end to be attained, and when necessary to the protection of the parties it must give them an opportunity to be heard respecting the justice of the judgment sought, and there must be the observance of those general rules established in our system of jurisprudence for the security of private rights.

Hagar vs. Reclamation District, 111 U. S., 701, at 708,

Davidson vs. New Orleans, 96 U. S., 97, at 107,

Bell's Gap R. R. Co. vs. Pennsylvania, 134 U. S., 232, at 237,

Lent vs. Tillson, 140 U. S., 316, at 327,

Kentucky Railroad Tax Cases, 115 U. S., 321, at 331,

Norwood vs. Baker, 172 U. S., 269, at 277, 278,

Roller vs. Holly, 176 U. S., 398, at 409.

Weimer vs. Bunbury, 30 Mich., 201, at 213.

Mr. Justice Harlan in French vs. Barber Asphalt Paving Co.,  
181 U. S., 324, at 356,

Miller on the Constitution, page 666,

Cooley on Taxation, p. 51 (2nd Ed.).

Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79, at 110,

County of Santa Clara vs. So. Pacific R. Co., 18 Fed., 385,  
at 390.

In Hagar vs. Reclamation District, 111 U. S., 701, at page 708, Mr. Justice Field, delivering the unanimous opinion of the Court, says:

"It is sufficient to observe here, that by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

In Bell's Gap Railroad Co. vs. Pennsylvania, 134 U. S., 232, at page 237, Mr. Justice Bradley, delivering the opinion of the Court upon the subject of the power of the State in taxation, says:

"It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible

property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise."

Mr. Justice Harlan in *French vs. Barber Asphalt Paving Co.*, 181 U. S., 324, at page 356, referring to the decision on the subject of due process of law in taxation in *Davidson vs. New Orleans*, says as follows:

"Here is a direct affirmation of the doctrine that a tax, assessment, servitude or other burden may be imposed by a State, or under its authority, consistently with the due process of law prescribed by the Fourteenth Amendment, if the person owning the property upon which such tax, assessment, servitude or burden is imposed is given an opportunity, in some appropriate way, to contest the matter."

In *Roller vs. Holly*, 176 U. S., 398, Mr. Justice Brown, delivering the opinion of the Court, at page 409, says:

"That a man is entitled to some notice before he can be deprived of his liberty or property, is an axiom of the law to which no citation of authority would give additional weight."

Mr. Justice Miller in his work on the Constitution, at page 666, says:

"A law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the Fourteenth Amendment to the Constitution, which declares that no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it, either before that amount is determined, or in subsequent proceedings for its collection."

2nd. The tax levied under said Act No. 173, is a State tax, imposed for the benefit of the educational funds of the State.

The determination of the tax for the purposes of the State is by the law of the land required to be made by the Legislature of the State.

(a) To determine the tax, when it is an ad valorem tax, requires that the Legislature state the amount to be raised or the rate of the tax upon the dollar of the valuation. The determination of the amount to be raised, or the rate of taxation on the valuation *is the essential, the chief and necessary act in taxation. In the nature of the case the determination of the amount, or the rate, is a legislative act.*

Being a necessary act of the Legislature it is not in the power of the State in the preservation of the established principles of American law, which constitute the law of the land, *to delegate or refer such determination to the action of any other body of officials.* It can not be referred to and made to depend upon the legislative or discretionary

action of the municipalities. This is most clearly established by the following authorities which have been heretofore cited and from which quotations have been made:

- Cooley on Taxation, pp. 61, 62, 63, 141, 142, 241, 242, (2nd Ed.),  
 Board of Park Comm'rs vs. Common Council of Detroit,  
 28 Mich., 228, at 236, 241, 248,  
 Metropolitan Police vs. Board of Auditors, 68 Mich., 576,  
 at 579,  
 Blades vs. Water Commissioners, 122 Mich., 366, at 379,  
 Wilcox vs. Paddock, 65 Mich., 23, at 29,  
 The People vs. Hurlbut, 24 Mich., 44, at 87, 95,  
 Cook Farm Co. vs. City of Detroit, 124 Mich., 426, at 429,  
 Attorney General vs. Detroit Common Council, 58 Mich., 213,  
 at 219, 220,  
 United States vs. New Orleans, 98 U. S., 381, at 392,  
 State R. R. Tax Cases, 92 U. S., 575, at 615,  
 Heine vs. The Levee Commissioners, 19 Wall., 655,  
 Meriwether vs. Garrett, 102 U. S., 472, at 501, 515,  
 Thompson vs. Allen County, 115 U. S., 550, at 555,  
 Harward vs. St. Clair Drain Co., 51 Ill., 130, at 133, 134, 135,  
 Parks vs. Board of Comm'rs, 61 Fed., 436, at 437, 438,  
 Loan Association vs. Topeka, 20 Wall., 655, at 664.

(b) The same principle is made imperative by the Constitution of Michigan, which by Article XIV, Section 14, provides as follows:

"Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

3rd. In the determination of a tax by the Legislature it is an essential of just legislation that the Legislature act in view of and determine the needs of the public in respect to the objects for which moneys are to be raised by taxation, and of the amount necessary to provide for those needs, *and also the extent to which it is just to bur-*

*den the taxpayers against whom the taxes are to be charged. These are principles which are fundamental in taxation.*

*Midland vs. Roscommon, 39 Mich., 424, at 427.*

*Michigan Land &c. Co. vs. Township of L'Anse, 63 Mich., 700, at 703.*

It is an axiom of our law that *the power to tax* is a power to destroy. The object of taxation is not to destroy but to promote the public interests, and the promotion of the public interests includes and requires the promotion of the interests of the taxpayers who must supply the public funds of the State.

It is only in the observance of these principles of legislation that the determination of taxation can be made, and the ordinary mode prescribed by law be pursued, or the action be just to the taxpayers, or be adapted to the end to be obtained, and the opportunity to be heard be given to the taxpayers to which they are entitled.

It is only in this way that the principles which govern due process of law, as declared by this Court, can be observed and applied in taxation.

4th. Where the amount of the tax to be raised, or the rate of taxation, is determined by the Legislature itself, the taxpayers who are to be charged with the taxes have a right to and an opportunity to be heard by the legislature upon the whole subject of the taxation, including the purpose of the tax, the needs of the public for the promotion of the object for which the taxes are to be imposed, the amount of taxation required for those needs, *and the amount which can be properly and justly charged against the taxpayers.*

The right to such a hearing is the right of petition to the Legislature upon the subject which is pending before the Legislature and upon which it is proceeding to act.

This right is a part of the law of the land.

*Cooley on Constitutional Limitations*, pp. 497, 498 (7th Ed.).

*a Story on the Constitution*, Sec. 1894.

*United States vs. Cruikshank*, 92 U. S., 542, at 552.

*Citizens' Bank vs. Board of Assessors*, 54 Fed., 73, at 80.

*Cooley on Constitutional Limitations*, page 497, says:

"The right of the people peaceably to assemble, and to petition the government for a redress of grievances is one which 'would seem unnecessary to be expressly provided for in a republican government, since it results from the very nature and structure of its institutions. It is impossible that it could be practically denied until the spirit of liberty had wholly disappeared, and the people had become so servile and debased as to be unfit to exercise any of the privileges of freemen.'"

And again, at page 498:

"The right of petitioning is indeed a necessary consequence of the right of free speech and deliberation,—a simple, primitive and natural right."

2 *Story on the Constitution*, referring to the provision of the Federal Constitution, of the right of the people peaceably to assemble, and to petition the government for a redress of grievances, says (Sec. 1894, p. 676):

"This would seem unnecessary to be expressly provided for in a republican government, since it results from the very nature of its structure and institutions. It is impossible that it could be practically denied, until the spirit of liberty had wholly disappeared, and the people had be-



come so servile and debased, as to be unfit to exercise any of the privileges of freemen."

In *Citizens' Bank vs. Board of Assessors*, 54 Fed., 73, at page 80, the Circuit Court, referring to the provision in the Constitution of Louisiana of the right of the people peaceably to assemble and petition the government, says:

"I take it to be undeniable that the 'right of petition' as that expression is used in the Constitution of the State, means the right of every being, natural and artificial, to apply to any department of government, including the Legislature, for the redress of grievance or the bestowal of right, and is a further guaranty of the enjoyment of such redress or right when obtained, free from all forfeiture or penalty for having sought or obtained it."

5th. The Constitution of Michigan grants to the taxpayers the absolute right to a hearing before the Legislature upon the measures to be adopted for their taxation.

Article XVIII, Sec. 10,

The State Tax-Law Cases, 54 Mich., 350, at 381, 382.

Article XVIII, Section 10, is as follows:

"The people have a right peaceably to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances."

In *State Tax-Law Cases*, 54 Mich., 350, Chief Justice Cooley uses the following language (pp. 381, 382):

"Legislators are confined to no one method and no particular time in obtaining the information they are to act

upon. They get it where they can, and when and of whom they please. The more they endeavor to learn that which others can inform them of, the better legislators are they likely to be."

"The Constitution of the State recognizes this difference in the provision that 'the people have the right peaceably to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.' Article 18, Section 10. This section gives and was intended to give to the people the right to present their views to the Legislature on any subject which is of legislative cognizance."

In *Loan Association vs. Topeka*, 20 Wall., 655, the Court speaking by Mr. Justice Miller, says (p. 663) :

"Of all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used and the extent of its exercise is in its very nature unlimited. It is true that express limitation on the amount of tax to be levied or the things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are levied, as the support of government, the prosecution of war, the National defence, any limitation is unsafe."

The abuse of the power of taxation referred to by Mr. Justice Miller is in the exercise of the taxing power by the Legislature. *The protection of the taxpayers against that abuse consists in the right of the taxpayers to be heard while the legislation for taxation is in action, and before it has passed into final enactment.*

It is submitted that it is clearly a taking of property without due process of law to deprive the taxpayer of the

right of an opportunity to be heard by the Legislature while the Legislature may be engaged in legislation which may constitute an abuse of that power.

This Court has held that the determination of a district for taxation—that is, what property shall be subject to taxation—for local purposes, is legislative action, and when instead of the Legislature making that determination it *delegates to a board of commissioners the power to determine the taxing district the taxpayers have a right to a hearing upon that subject before such board.* The deprivation of the right to such hearing would be taking property by taxation without due process of law.

Paulsen vs. Portland, 149 U. S., 30, at 40,

Fallbrook Irrigation District vs. Bradley, 164 U. S., 112,  
at 170, 175,

Spencer vs. Merchant, 125 U. S., 345, at 356,

French vs. Barber Asphalt Paving Company, 181 U. S., 324,  
at 339, 340, 341.

The principle of those decisions is that parties who are subjected to taxation by any legislative action have a right to be heard before the legislative body while it is enacting legislation for their taxation. If the Legislature determines the taxing district the taxpayers have the right of hearing upon that subject which is secured to them by the fundamental and constitutional right of petition. But if the Legislature delegates to a municipal body the power to determine the district, the Legislature must provide for and preserve to the taxpayers their right to be heard upon the same subject before such municipal body.

6th. This right is taken from the railroad companies and their stockholders by the provisions of the act under which they are taxed which makes the action of the municipalities the determination of the rate of tax.

The reply for the defense is that the provisions of the Constitution of Michigan authorize the method of taxation adopted in the statute, and if thereby the railroad companies are deprived of the right of hearing before the Legislature, it is a deprivation provided for by the State Constitution.

The argument comes to this, viz.: That by the State Constitution all persons, both natural persons and corporations, and all stockholders of corporations shall have the right of petition and hearing before the Legislature upon every subject of legislation which affects their interests, *except railroad companies and their stockholders. When these are being taxed they shall have no right of petition nor right to be heard.*

We insist that this contravenes due process of law, and that it denies the equal protection of the laws. It is none the less a violation of the provisions of the Fourteenth Amendment because authorized by the State Constitution.

7th. As before stated, the Legislature, by the adoption of the act in question does not determine the tax by which the taxes are levied under said act.

The effect of the act is this: In place of providing that a designated sum shall be raised, or that the rate of taxation of the railroad companies shall be \$16.00 on the \$1,000.00 of valuation of their property, or some other number of dollars on the thousand dollars of such valuation, the act provides that the rate for the railroad companies shall be \$16 on the thousand dollars' valuation, in case the municipalities, by their action and legislation shall determine that \$16 *on the thousand dollars of their*

*own valuation* shall be the rate of taxation in the municipalities, but if the municipalities determine that their rate on their valuation shall be \$15, then the rate for the railroad companies shall be \$15, and if the municipalities shall determine some other or different rate for themselves, the rate so determined upon shall determine the rate for the railroad companies, and whatever changes shall be made from year to year in their rate by the municipalities shall determine the rate for the railroad companies from year to year.

*To assert that municipalities do not by their action determine the rate of taxation of the railroad companies is to contradict a plain fact.*

To assert that the determination of the rate for the railroad companies by such method is the same in effect, or is equivalent to the adoption by the Legislature each year of the rate determined for that year by the municipalities after such determination by the municipalities has been made, is clearly without support.

In the adoption of Act No. 173, neither the amount of the taxes which would be levied under it, nor the rate, could be understood or foreseen by the Legislature, for the reason that the determination of the amount and rate would depend, and must depend upon the exercise from year to year of the legislative discretion of the municipalities in determining the amount of taxes to be raised *for entirely other purposes*, which are in no way related to the object for which the railroad companies are taxed, and which amount raised for other purposes would be determined by the constantly changing conditions and needs and desires of those communities.

8th. The railroad companies had an opportunity in the legislation by which said Act No. 173 was adopted to be heard in relation to the adoption of the act, but as the act did not state the amount of the tax, or the rate in terms of money, but only determined that such amount or rate should be determined by reference to the action thereafter to be taken from year to year by the municipalities, the only opportunity which the railroad companies had for a hearing was upon the question *as to whether such reference should be made to the municipalities for the determination by their action of the rate.*

9th. It is not true that the companies have an opportunity for a hearing before the municipalities upon the subject of the amount of the taxes to be raised under said act, or the rate of taxation to be imposed upon them, because those subjects are not to be considered by the municipalities, and they have no power to consider them. The rate of taxation of the railroad companies which would result from the action of the municipalities is not to govern the action of the municipalities in respect to their own taxes, *but their action is expressly made to govern the rate of taxation for the railroad companies.*

No reasoning can eliminate the fact that it is the action of the municipalities which fixes and determines the rate of the railroad tax.

On the other hand, if after the municipalities have determined the rate of taxation in any year that rate should come before the Legislature for its adoption as the rate to be imposed upon the railroad companies, the same considerations would be before the Legislature in respect to the need of such a rate to provide for the public interest of the educational funds of the State, and the

justice of imposing such a rate upon the companies, and if the rate of taxation in the municipalities for their local purposes was to be considered at all by the Legislature there could also then be taken into account in what manner, and by what expenditures, whether needful or useless, proper or extravagant, the municipal rate had been made, and upon all these subjects the companies would have their right of opportunity for a hearing before the Legislature, by their petition.

It is respectfully insisted that the determination of the rate of taxation in the manner provided by said Act and the deprivation of these taxpayers of said right of hearing, by the operation of said act, violates due process of law.

In *Cotting vs. Kansas City Stock Yards Co.*, 183 U. S., 79, at page 110, Mr. Justice Brewer, delivering the opinion of the Court says:

"It has been more than once said, judicially, that one of the principles upon which this government was founded is that of equality of right. It is emphasized in that clause of the Fourteenth Amendment which prohibits any State to deny to any individual the equal protection of the laws. That constitutional provision does not, it is true, invalidate legislation on the mere ground of inequality in actual result. Tax laws, for instance, in their nature, are and must be general in scope, and it may often happen that in their practical application they touch one person unequally from another. *But that inequality is something which it is impossible to foresee and guard against, and therefore such resultant inequality in the operation of a law does not defeat its validity.*"



In *County of Santa Clara vs. Southern Pacific R. Co.*, 18 Fed., 385, at page 399, Mr. Justice Field uses the following language:

"Unequal taxation, so far as it can be prevented, is, therefore, with other unequal burdens, prohibited by the amendment. There undoubtedly are, and always will be, more or less inequalities in the operation of all general legislation arising from the different conditions of persons from their means, business, or position in life, against which no foresight can guard. But this is a very different thing, both in purpose and effect, *from a carefully devised scheme to produce such inequality; or a scheme, if not so devised, necessarily producing that result.* Absolute equality may not be attainable, but gross and designed departures from it will necessarily bring the legislation authorizing it within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position that unequal taxation is not within the scope of its prohibitory clause would give to it a singular meaning. It is a matter of history that unequal and discriminating taxation, leveled against special classes, has been the fruitful means of oppressions, and the cause of more commotions and disturbance in society, of insurrections and revolutions, than any other cause in the world. It would, indeed, as counsel in the *San Meteo Case* ironically observed, be a charming spectacle to present to the civilized world, if the amendment were to read, as contended it does in law: 'Nor shall any state deprive any person of his property without due process of law, *except it be in the form of taxation*; nor deny to any person within its jurisdiction the equal protection of the laws, *except it be by taxation.*' No such limitation can be thus ingrafted by implication upon the broad and comprehensive language used. The power of

oppression by taxation without due process of law is not thus permitted; nor the power of taxation to deprive any person of the equal protection of the laws."

In *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., this language is used (p. 558) :

"No rule can be formulated that will cover every case. But upon this general question we have said that the guarantee of the equal protection of the laws means *'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.'*"

In the same case it is said (p. 560) :

"No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

## V.

The equal protection of the laws is denied to the railroad companies subjected to taxation under said Act No. 173, in that the protection which is extended by Section 14 of Article XIV of the Constitution of Michigan to all other taxpayers of the State is denied to said railroad companies.

Said Section 14 is as follows: "Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

(a) This provision was adopted into the Constitution

of 1850, literally from Section 13, Article VII, of the Constitution of 1846, of the State of New York.

1 Revised Statutes of N. Y., page 68, (5th Ed.)

The interpretation of this provision of the Constitution of New York, by the unanimous opinion of the Court of Appeals, is that it is designed for the protection of the taxpayer; that strict compliance with it is required, and that no room for lax interpretation is allowed.

It requires that when the Legislature imposes a tax the Legislature must determine the amount of tax to be raised, and cannot leave that amount to be determined by the legislative action or discretion of any other department of the State.

People vs. Board of Supervisors of Kings Co., 52 N. Y., 556, at 566.

In the above case the Court of Appeals of New York, speaking of the above provision of the Constitution says as follows (pages 566 and 567): "The Constitution, prescribing the requisites of a law imposing a tax, is in harmony with the other provisions designed *for the protection of the taxpayer*. Its terms are precise and unambiguous, leaving no way of escape from the literal compliance with them, and no room for evasion by any lax interpretation. They are so plain they need no interpretation. It declares that 'every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.'" (Const., Art. 7, Sec. 13).

"The tax would have been well specified in amount but for a clause found for the first time in a tax law. A tax

of three and one-half mills upon the dollar of the assessed value of the real and personal property in the State is definite and certain. But the Legislature have qualified the same and authorized the tax to be reduced if it should be found, upon a corrected estimate, that a lesser tax would give the necessary means. The law imposes a tax of three and a half mills per dollar, or so much thereof as may be necessary to provide for the payment, etc. This is not a specific and distinct statement of the tax to be levied, it is simply a statement of the maximum tax to be levied, *leaving it to the discretion of the administrative officers of the State to levy such tax as they shall find necessary up to the limit named. The Legislature cannot, under the Constitution, thus delegate the power of taxation. They must determine the amount necessary and adequate, and declare the amount to be levied absolutely.* If this form of enactment is allowable, a law authorizing a tax of fifty per cent. of the assessed value of the taxable property of the State, or so much thereof as might be necessary, would be valid, and the whole legislative taxing power delegated to the other departments of the State government. The law is invalid as not stating the tax imposed."

It must be without question that this provision of the Constitution of Michigan is designed for the protection of the taxpayer, and that the protection consists in the requirement that when the law is enacted which imposes a tax upon the taxpayer, the legislature which adopts the law shall itself then, in the terms of the statute, determine the amount of the tax in terms of money, by stating the sum to be raised, or the rate of the tax to be levied, and shall not leave to the action of any other body the exercise of the discretion by which the amount of the tax shall be determined or stated.

The plain intention of said Act No. 173 is not to itself state the tax, but it is to so provide that the railroad companies shall be taxed at a rate which shall be each year, and from year to year equal to the average rate of taxation which the people, *acting in the several municipalities, shall cause to be levied upon the property of the municipalities for local and municipal purposes, in addition to the rate required for governmental purposes*, such rate of taxation for local municipal purposes to be determined by the legislative discretion and action of the municipalities.

It is clearly arbitrary taxation based upon the simple principle of compelling the railroad companies *to pay as great a rate of taxation to be used for a public purpose as the municipalities should for themselves decide to pay for their private purposes*.

If the act had provided distinctly that the railroad companies should pay a rate of taxation on their property equal to the rate of taxation levied upon other property for State purposes, *and such further and additional rate as should be determined by a vote of the municipalities voting thereon*, the amount of the taxes to be paid by the railroad companies would have been no more effectually and distinctly determined by the action of the municipalities than it is now directed to be determined by said act. In such case there could be no denial that the legislature, instead of stating the tax, had delegated to the municipalities the authority to state the tax, and that such delegation was in contravention of said provision of the State Constitution.

The difference between that case and the provisions of Act 173 is that in the former case the delegation would have been direct, while in the case under the statute the delegation is indirect.

What the legislature is forbidden to accomplish directly it is forbidden to accomplish indirectly.

When the legislature in adopting an act, distinctly states the tax, as said provision of the Constitution requires; that is, determines what the amount to be raised shall be, the taxpayers have the protection of being represented by the legislators upon that distinct subject, *and of having the opportunity to be heard by petition to the legislature upon the subject of the amount of the tax*, and of the amount which ought justly to be imposed upon them.

No possible means of protection is afforded to the companies against the needlessness or unjustness of the amount of taxation imposed upon them by such action, nor is there even an opportunity afforded them for a protest, as would exist were the amount of taxes determined by the legislature instead of the municipalities.

The precise point to which the Court's attention is directed is that no taxpayers who are not taxed under said act are subjected to any such conditions in the imposition of any State tax, or any other tax whatever, which is imposed upon the railroad companies.

They are protected from such conditions in taxation by said Section 14, of Article XIV, of the Constitution.

In respect to all taxes imposed upon the other taxpayers of the State there is, under the Constitution and laws, a protection afforded them in respect to the amount of taxation, *by an opportunity and a right to a hearing on the subject of the amount of tax before the body which determines the amount of tax, and in the action by which the amount is determined, whether it be the legislature,*

*a city council, a board of supervisors, a township meeting, or township board, or school district board.*

(b) The fact that Act No. 173 is authorized by Sections 10 and 11 of Article XIV of the Constitution of Michigan, as amended in 1900, does not remove the objection that the companies are denied the equal protection of the laws. The State can no more deny the equal protection of the laws to any person within its jurisdiction by provisions of its Constitution than it can by the provisions of a statute.

The Fourteenth Amendment to the Constitution of the United States which forbids the State to deprive any person of property without due process of law, or to deny to any person within the jurisdiction of the State the equal protection of the laws, applies to all the means by which such a denial can be made.

Chicago &c. R. R. Co. vs. Chicago, 166 U. S., 226, at 233.

New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S., 650, at 672.

Gunn vs. Barry, 15 Wall., 610, at 623.

The Railroad Tax Cases, 13 Fed., 722.

County of Santa Clara vs. So. Pac. R. Co., 18 Fed., 385.

This Court and the Supreme Court of Michigan, have held that taxation imposed for a purpose which is not a public purpose is the taking of property without due process of law, and the Courts may determine whether the purpose of the taxation is a public purpose.

Loan Association vs. Topeka, 20 Wall., 655, at 663.

Missouri Pacific R. Co. vs. Nebraska, 164 U. S., 403, at 417.

Dodge vs. Mission Township, 107 Fed., 827, 828 (C. C. A.).

People vs. Salem, 20 Mich., 452, at 474.

Bay City vs. State Treasurer, 23 Mich., 499, at 503.

Anderson vs. Hill, 54 Mich., 477, at 491.



The question is not whether the State Constitution authorizes this method of taxation. The question is whether this method deprives the railroad companies of their property without due process of law, or denies to them the equal protection of the laws. If it does do either, the fact that the State Constitution authorizes the method establishes the fact that the State Constitution contravenes the Fourteenth Amendment and is itself invalid.

(c) Said Section 14 of Article XIV of the State Constitution is referred to in *Trowbridge vs. City of Detroit*, 99 Mich., 443, and in *Westinghausen vs. People*, 44 Mich., 265. These cases are in no way opposed to the position above presented in relation to said Section 14.

In *Trowbridge vs. City of Detroit*, 99 Mich., 443, a statute provided for the opening of streets in Detroit by condemnation proceedings, in which the jury were to determine the necessity of taking land for the street and the just compensation to be made therefor. The statute further provided that the Common Council should provide for the collection of the sum awarded by the jury, the assessment to be made and the amount levied and collected in the same manner and by the same officers and proceedings, as near as may be, as is provided in the charter for assessing, levying and collecting the expense of public improvements when a street is graded.

It was objected to the proceedings taken under the statute to collect the tax, that they were invalid because in violation of said Section 14 of Article XIV of the State Constitution.

It was held that the statute fixed both tax and object.

In that case the amount fixed for the tax was the amount of just compensation for the taking of the land which

should be determined by the verdict of the jury. It was the usual provision in our statutes for determining the compensation to be made when land is taken for the public use, and for levying a tax to pay the compensation.

In such cases the statute does not leave the amount of the tax to be fixed by the legislative action or discretion of the Common Council. It requires the jury to find as a fact, from evidence, the amount in money due to the owner of the property as his compensation for his property taken for the public use and directs the levy of that sum.

The statute authorizes the judicial investigation by a jury to determine the amount of money *under the provisions of Article XVIII, Section 2, of the State Constitution*, which is as follows: "When private property is taken for the use or benefit of the public, the necessity for using such property *and the just compensation to be made therefor*, except when to be made by the State, shall be ascertained by a jury of twelve freeholders, residing in the vicinity of such property, or by not less than three commissioners appointed by a Court of Record, as shall be prescribed by law: *Provided*, The foregoing provisions shall in no case be construed to apply to the action of commissioners of highways in the official discharge of their duty as highway commissioners."

*The case before the Court was one in which the legislature is forbidden by the Constitution to determine the amount to be levied, and is required to provide for its determination by a jury, or by commissioners.*

In the case of *Westinghausen vs. People*, 44 Mich., 265, the only question was whether *the statute stated the object*

of the tax. It was not whether the statute stated the tax.

The comments of Justice Campbell upon the origin of the constitutional provision "that every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied," refers only to the clause requiring the State to state *the object of the tax*.

The amendment to the Constitution of 1835, referred to by Justice Campbell, contained no requirement that a law *should distinctly state the tax*, and such amendment, by its terms, applied only to a law authorizing the borrowing of money, or the issuing of State stocks, whereby a debt shall be created on the credit of the State.

The provision of the Constitution of 1835, referred to by Justice Campbell is as follows: "That the Constitution of this State be so amended, that every law authorizing the borrowing of money, or the issuing of state stocks, whereby a debt shall be created on the credit of the State, *shall specify the object* for which the money shall be appropriated."

Revised Stat., 1846, page 30.

There has been no decision by the Supreme Court of Michigan which places any different construction upon the provision of said Section 14 of Article XIV, that every law which imposes a tax shall state the tax, than is given to it by the Court of Appeals of New York in the case of *The People vs. The Supervisors of Kings County*.

The constitutionality or validity of the Act No. 173 was not passed upon in *Board of Education of Detroit vs. State Board of Assessors*, 138 Mich., 116.

The only point decided in that case, and the only point

presented for decision was that under the provisions of the statute the State Board of Assessors had no authority to equalize the assessments made by the local assessors of the property not taxed under said act and the assessments of the properties of the railroad companies made under said act. *The railroad companies were not represented in that suit, and none of the questions were presented to the Court which are discussed in the present case.*

In *Atwood vs. Mayor of Sault Ste. Marie, et al*, decided by the Supreme Court of Michigan, September 19, 1905, 12 *Detroit Legal News*, p. 403, referring to a point claimed to have been decided in the former case of *Christopherson vs. Common Council of Manistee*, the Court says (p. 404): "This question was not, however, brought to the attention of the Court, and was not considered by it. Points decided in this manner are not binding as precedents. In *Maloney vs. Dows*, 8 *Abbott's Practice Rep.*, at page 331, it is said: 'If a point is essential to the decision rendered, it will be presumed that it was duly considered, and that all that could be urged for or against it was presented to the Court; but if it appears from the report of the case that it was not taken or inquired into at all, there is no ground for this presumption, and the authority of the case is proportionately weakened.' We are not, therefore, bound to follow *Christopherson vs. Common Council of Manistee* as a precedent."

Under the expressed views of the Michigan Supreme Court the decision rendered in *Board of Education of Detroit vs. State Board of Assessors* leaves open all the questions raised in this suit in respect to the validity of said Act No. 173.

## VI.

Equal protection of the laws is denied to the railroad companies under said Act No. 173, in that no provision is made for the equalization of the assessment of the property taxed under said act and the assessment of the other property of the State. in order to determine the rate of taxation imposed under said act.

1st. The rate of taxation imposed upon the railroad companies is determined by the rate at which the other property of the State is assessed in comparison with the rate at which the railroad properties are assessed.

If the property of the railroad companies is assessed at its *cash value* by the State Board of Assessors, and the other property of the State is assessed *at one-half its cash value*, the amount of taxes imposed upon the railroad companies will be increased to the amount of one hundred per cent.

If the assessed valuation of the other property is at any other amount less than its cash value, the taxation of the railroad companies will be increased in like proportion.

The State Constitution, by Article XIV, Sections 10, 11, 12, 13 and 14, provide as follows:

"Sec. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November

sixth, A. D., nineteen hundred, shall be applied as provided for specific taxes in section one of this article."

"Sec. 11. The legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes."

"Sec. 12. All assessments hereafter authorized shall be on property at its cash value."

"Sec. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a State board, on all taxable property, except that taxed under laws passed pursuant to section ten of this article."

"Sec. 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

It is the plain purpose of the Constitution to authorize the legislature to provide for the assessment of the property of corporations by a State Board of Assessors, and the assessment of the other property of the State by local assessors, or the adoption of one system for the assessment of all property paying ad valorem taxes; *but the intention is distinct and positive that all property paying ad valorem taxes shall be taxed upon the one basis of its cash value.*

It is a positive command of the Constitution that "all assessments hereafter authorized shall be on property at its cash value."

It is the intent of the Constitution that every person or corporation shall pay a tax in proportion to the cash value of his or its property, so that all classes of property shall bear the burden of taxation equally, *so far as the burden of taxation shall be affected by the basis upon which the assessment of property is made.* This is the construction of the constitutional provisions by the Supreme Court of the State in the case of Board of Education vs. State Board of Assessors, 133 Mich., 116, at 120.

The Court, after referring to the provision by which the rate of taxation is to be determined for corporations whose property is assessed by the State Board of Assessors, says (p. 120): "This constitutional provision cannot be segregated from other provisions relating to the subject ~~of~~ taxation. Construed in the manner above indicated, it is in entire accord with our whole system of taxation, *which is not only that railroad property, but that all other property shall be assessed at cash value, and that all classes of property shall bear the burden of taxation equally.*"

This construction of the Constitution of the State will be adopted as final in the Federal Courts.

Leffingwell vs. Warren, 2 Black, 599, at 603.

Provident Institution vs. Massachusetts, 6 Wall., 611, at 628.

Sioux City R. Co. vs. N. A. Trust Co., 173 U. S., 99, at 107.

Morley vs. Lake Shore R. Co., 146 U. S., 162, at 166, 167.

Fallbrook Irrigation District vs. Bradley, 164 U. S., 112, at 154.

Merchants' Bank vs. Pennsylvania, 167 U. S., 461, 462.

The command of the Constitution of the State, then, is that the provisions of legislation for taxation shall be



framed to accomplish the imposition of taxation in such manner that, by whatever boards or officers the different assessments of property may be made, all persons and corporations *shall be taxed in proportion to the cash valuation of their property.* That is to say, on the same basis of valuation, the *rate* to be imposed on the valuation may be different, but the valuation on which the rate shall be fixed shall be the same, viz.: the cash value.

2nd. The Fourteenth Amendment to the Constitution of the United States applies to the protection of the taxpayers in the legislation provided for by the Constitution, and requires *that in such legislation no person shall be denied the equal protection of the law.* It requires that whatever measure shall be adopted to protect any portion of the taxpayers against taxation not levied or imposed upon their property in proportion to the cash value of their property, shall be also provided for all taxpayers who have like need of such protection, or who may be subjected to imposition of taxation upon their property not in proportion to its cash value for want of such means of protection.

Such protection is provided by the State laws for all persons and corporations paying ad valorem taxes not taxed under said Act No. 173, by means of the equalization of all assessments which affect the proportion or rate of taxation to be levied upon the valuation of their property, to the end that none of such persons or corporations shall bear an unjust, unequal or unlawful rate or burden of taxation by reason of an improper, unjust, unequal, or unlawful assessment of either his or its own property, or the property of others, by which the rate or amount of his or its taxation may be affected. This pro-

tection is denied to the corporations which are taxed under said Act No. 173.

All the property in a township is required to be assessed by the supervisor at its true cash value. The rate of taxation which each taxpayer shall pay is determined either by his own property and all other property in the town being assessed at its true cash value, *or being assessed in the same relative proportion to its true cash value.*

If his own property, or the property of another taxpayer, is not assessed at its true cash value, or in the same relative proportion to its true cash value, the amount of tax to be paid by him will be unequal and unjust.

If his property is assessed at more than its true cash value, or if any other property is assessed at less than its true cash value, he is made thereby to pay more than his just proportion of all the taxes levied in the township.

To protect him against such result, the law provides for an equalization of the supervisor's assessment by a board of review of the township, before which board every taxpayer may appear and be heard as to the assessment of his own property and the assessment of all other property in the township.

1 Comp. Laws, Secs. 3833, 3847, 3851, 3852, 3853.

The provisions of the statute are as follows:

"Sec. 3833. An assessment of all the property in the state, liable to taxation, shall be made annually in the several townships, villages and cities thereof by the supervisors of the several townships and wards, or in villages and cities, where provision is made in the acts of incorporation or charter for some other assessing officer, then by such assessing officer, as hereinafter provided."

"Sec. 3847. On or before the third Monday of May in each year, the supervisor or assessor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed in his township or assessment district, with a full description of all the real property therein liable to be taxed. \* \* \* The supervisor shall estimate, according to his best information and judgment, the true cash value of every parcel of real property and set the same down opposite such parcel. He shall also estimate the true cash value of all the personal property of each person, and set the same down opposite the name of such person. In determining the property to be assessed, and in estimating such value, he shall not be bound to follow the statements of any person, but shall exercise his best judgment."

"Sec. 3851. At the annual township meeting held on the first Monday of April in the year 1894, there shall be elected by ballot, on the regular township ticket, two suitable electors of the township to serve as members of the board of review, one of whom shall be elected for one year, and one for two years, and annually thereafter one member shall be elected for two years, who shall take the constitutional oath of office as other township officers. The supervisor and the two electors so elected shall constitute a board of review for such township."

"Sec. 3852. On the Tuesday next following the third Monday in May, the board of review of each township shall meet at the office of the supervisor; at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the said board shall proceed to examine and review the same, and during that day, and the day following if necessary, said

board of its own motion, or on *sufficient cause being shown by any person*, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. *The board shall pass upon each valuation and each interest, and shall enter the valuation of each as fixed by it, in a separate column.*"

"Sec. 3853. Said board of review shall also meet at the office of the supervisor on the fourth Monday in May at nine o'clock in the forenoon, and continue in session during the day and the day following. Such board shall continue its sessions at least six hours each day, *and at the request of any person whose property is assessed thereon, or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property, in such manner as in their judgment shall make the valuation thereof relatively just and equal.* To that end said board may examine on oath the person making such application, or any other person touching the matter."

As the taxpayers in each township are interested in and affected in like manner by the assessment of the property in each of the other townships in the county in respect to the state and county tax to be paid by them, the Board of Supervisors of the county is required to equalize the assessments made in the townships of the county, and each taxpayer is represented before said board by the supervisor of his township, whose duty it is to secure a just equalization.

The following is the provision:

"The board of supervisors in each county shall, at their session in October in each year, examine the assessment rolls of the several townships, wards, or cities, and ascertain whether the relative valuation of the real property in the respective townships, wards or cities, *has been equally and uniformly estimated*. If, on such examination, they shall deem such valuation to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward, or city, or townships, wards, or cities, such an amount as in their judgment *will produce relatively an equal and uniform valuation of the real property in the county*, and the amount added to or deducted from the valuation in any township, ward, or city, shall be entered upon the records. They shall also cause to be entered upon their records the aggregate valuation of the taxable real and personal property of each township, ward, or city, in their county as determined by them."

"Sec. 3860. The board of supervisors, at their annual session in October in each year, shall ascertain and determine the amount of money to be raised for county purposes, and shall apportion such amount, and also the amount of the state tax and indebtedness of the county to the state among the several townships in the county in proportion to the valuation of the taxable property therein, real and personal, as determined by them for that year, which determination and apportionment shall be entered at large on their records. \* \* \* *They shall hear and duly consider all objections made to raising any such moneys by any taxpayer to be affected thereby.*"

As the taxpayers in each county are affected in like manner by the assessment of the property in each of the other

counties of the state in respect to the state tax to be paid by them, the State Board of Equalization is required to equalize the assessment made in the counties, and provision is made for the taxpayers in each county to be represented and heard before said board.

1 Comp. Laws, Secs. 129, 132, 133.

The following are the provisions:

"Sec. 129. There shall be a state board of equalization, to consist of the lieutenant governor, auditor general, secretary of state, state treasurer, and commissioner of the land office, whose duty it shall be, in the year eighteen hundred and fifty-one, and every fifth year thereafter, to equalize the assessments on all taxable property in the state, except that paying specific taxes, as hereinafter provided."

"Sec. 132. After said board shall have been organized, they shall proceed to examine the tabular statements of the board of supervisors of each county, provided for in the eighth section of this act, *and to hear the representatives from the several boards of supervisors as hereinafter provided*; and they shall determine whether the *relative valuation* between the several counties is equal and uniform, according to location, soil, improvements, production and manufactories; and also whether the personal estate of the several counties has been uniformly estimated, according to the best information which can be derived from the statistics of the state, or from any other source. If, after such examination, such assessment shall be determined *relatively unequal*, they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in such county or counties, such percentage as will produce relative equal and uniform

valuations between the several counties in the state; and the percentage added to or deducted from the valuations in each county shall be entered upon their records; and the valuations of the several counties, as equalized, shall be certified and signed by the chairman and secretary of the board, and filed in the office of the auditor general, and shall be the basis for apportioning all state taxes until another equalization shall be made."

"Sec. 135. The board of equalizers shall hear any evidence which may be laid before them by any person appointed by any board of supervisors, and any representation made by such person in behalf of any county."

The taxpayers in cities and villages are protected in like manner by the provisions of their special charters, or under the general statutes relating to cities and villages, where cities and villages are incorporated under the general statutes.

The general statutes relating to cities are 1 Compiled Laws, Secs. 3322, 3323, and Secs. 2860 and 2861 in respect to villages.

The provisions in relation to cities are as follows:

"Sec. 3322. The supervisors of the several wards, the mayor and the city attorney, shall constitute a board of equalization and review of the general assessment rolls of the several wards c/ said city, a majority of whom shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day. They shall have the power, and it shall be their duty, to examine said assessment rolls, and they shall have authority to, and shall correct any errors or deficiencies found therein, either as to the names, valuations, or descriptions; and of their own motion or on cause shown, *may reduce or in-*



*crease the valuation of any property found on said rolls.*  
 \* \* \* If on such examination they shall deem the valuation of the several wards to be relatively unequal, they shall equalize the same by adding to or deducting from the total valuation of the taxable property in any ward such an amount as, in their judgment, will produce relatively an equal and uniform valuation of the real estate in the city."

"Sec. 3323. The said board shall meet on the third Monday in May in each year, at the council rooms in such city, at nine o'clock in the forenoon. \* \* \* And any person or persons desiring so to do, may examine his, her, or their assessment on said rolls, and may show cause, if any exists, why the valuation thereof should be changed, and the said board shall decide the same, and their decision shall be final."

The provisions of Sections 2860 and 2861 in respect to villages are substantially the same.

3rd. The necessity for equalization by the board of supervisors and by the state board of equalization arises because of the fact that the property in each town is assessed by a separate assessor of that town, and the amount of the assessed valuation of the property in each county is determined by the board of supervisors of that county. As the amount or rate of taxation for state and county purposes of each taxpayer in every town is affected by the rate at which the property in all other towns in the county is assessed, compared with the rate at which the property in his own town is assessed, an equalization of the assessments in all the towns of the county is provided for.

As the amount or rate of taxation for state purposes of

each taxpayer in every town is affected by the rate at which the property in each county in the state is determined by the board of supervisors of that county, as compared with the rate at which property is assessed in his own county, an equalization of the assessed valuations in all the counties is provided for.

In this manner the laws provide for protection of all taxpayers, who are not included in said Act No. 173, who are taxed upon the value of their property, against unequal and unjust taxation which may arise from the unequal, unjust or unlawful assessment of their property, or the properties of others, *in all cases where such assessments may affect the amount of their taxation.*

*If they are unjustly taxed under such provisions, the fault is not in the law. The law makes ample provision for their protection against unjust taxation arising from improper assessments either of their property or the property of others.*

4th. By the provisions of Act No. 173, the rate or amount of taxation imposed upon the railroad companies is made expressly and specifically to depend upon the valuation at which the property in the state not included in said act is assessed.

The only means by which both the property of the railroad companies and the other property of the State can be made to bear the burden of taxation equally *in proportion to the cash value of the properties*, is by their assessments being made relatively equal in proportion to their value. This can be accomplished by the equalization of the assessment made of the railroad properties by the State Board of Assessors, and the assessment made of the other property of the State by the local assessors.

5th. It is no answer to say that the law requires the property of the railroad companies to be assessed at its cash value by the State Board of Assessors, and the other property of the State to be assessed at its cash value by the local assessors, and that the law presumes that the assessments are so made, and therefore no equalization of their different assessments is provided for or needed.

The law explicitly requires that each supervisor shall assess the property of his township at its cash value, and the same legal presumption exists that the supervisors in all the towns in the state make their assessments as the law requires, and if their assessments were in fact made at cash value, all the property assessed by the local assessors would be assessed equally, and no equalization of these assessments would be required to produce equality of taxation in proportion to value. The presumption that the assessments are made as the law requires them to be made *is not a conclusive presumption*. It has only *prima facie* force.

Cooley on Taxation, p. 418, (2nd Ed.)

The State does not act on the legal presumption that those assessments are made in fact at cash value of the property as between the taxpayers, in respect to both natural persons and corporations, not taxed under said Act No. 173.

By providing by statute for the equalization of these assessments, the State recognizes that these assessments may not be made at cash value, and therefore not relatively equal in proportion to the cash value of the different properties, and to protect these taxpayers against unjust taxation arising from such assessments, equalization of those assessments is required by statute.

The equalization is provided for because the assessments are made *of the different properties by different officers acting independently of each other.*

The same legal presumption exists that the board of supervisors of the counties of the State do their duty according to law in equalizing the properties in the counties, but the State does not act on that presumption. The ~~State~~ <sup>State</sup> recognizes that the board of supervisors may not accomplish what the law requires to be done, and to protect the taxpayers against the consequences of such failure, the equalization of the State Board of Equalization is provided for.

The State regards the equalization of these different assessments made by the local assessors so important for the protection of the taxpayers in securing to them the payment of taxes in proportion to the cash value of their property, *that no taxes levied against them are of any validity unless such equalization is made,*

Yelverton vs. Steele, 36 Mich., 62, 63.

Auditor General vs. Roberts, 83 Mich., 471, at 474.

Auditor General vs. Hill, 97 Mich., 80, 81, 82.

Maxwell vs. Paine, 53 Mich., 30, at 32.

The object of equalization is to accomplish *relative equality in valuation.*

The assessments are examined and compared by the equalizing board, not for the purpose of ascertaining whether the assessments have been made at cash value and making them conform to cash value, *but the purpose of equalization is to ascertain whether the assessments are relatively equal in proportion to the cash value of the different properties,* because if they are thus relatively

equal, equality of burden, which the Constitution aims at, will be secured whether the assessments are on the basis of cash value or on a basis less or other than cash value.

Williams vs. Mears, 61 Mich., 86, at 87.

Provident Institution vs. Massachusetts, 6 Wall., 611, at 632.

In Williams vs. Mears, 61 Mich., 86, an offer was made to show that the valuation or equalization was fifty per cent. of the true valuation of property.

The Court say of the offer (p. 87) : "If established by proof, the result would not injuriously affect the tax, because, if the reduction was uniform, the proportionate burden would be the same. And such would be the case, also, if all the supervisors in the county agreed that they would assess property uniformly at fifty per cent. of its value."

In Provident Institution vs. Massachusetts, 6 Wall., 611, the Court say (p. 632) : "Comparative valuation in assessing property taxes is the basis of computation in ascertaining the amount to be contributed by an individual."

The board of supervisors is not authorized to raise the valuation of the property of the county, as a whole, except as the operation of making the assessments of the different towns relatively equal may produce that result. The board of supervisors are not required, nor are they authorized to determine whether the assessments have been made at cash value, and if they determine that they have not been so made, to place the assessments on that basis.

Their duty is to "examine the assessment rolls of the several townships, wards, or cities, and ascertain whether the *relative* valuation of the real property in the respective townships, wards or cities has been equally and uni-

formly estimated. If on such examination they shall deem such valuation *relatively unequal*, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward, city, or townships, wards, or cities, *such amount as in their judgment will produce relatively an equal and uniform valuation of the real property in the county*, and the amount added to or deducted from the valuation in any township, ward, or city shall be entered upon the records. They shall also cause to be entered upon their records *the aggregate valuation of the taxable real and personal property of each township, ward, or city, in their county as determined by them.*"

1 Comp. L., 1897, Sec. 3857, above quoted.

If upon examination of the several assessment rolls the board of supervisors find that the assessments have been made at one-half, two-thirds, or three-fourths of the cash value of the properties assessed, and find that the assessments in the different towns are relatively equal, or, do not "*deem such valuation relatively unequal*," they have no power to change any of the assessments.

Their duty is not to determine whether the assessments *are made according to law*, but to determine whether, whatever the basis of valuation employed by the several supervisors, *such valuation is relatively equal*.

The case is the same with the State Board of Equalization. It is not authorized to raise the valuation of the property of the State, as a whole, except as it may be accomplished by equalizing the valuations of the different counties. The State board takes the tabular statements of the board of supervisors of each county and "*determines whether the relative valuation between the several*

*counties is equal and uniform, according to location, soil, improvements, production and manufactories," and also whether personal estate of the several counties has been uniformly estimated, according to the best information which can be derived from the statistics of the State, or from any other source. If, after such examination, such assessment shall be determined relatively unequal, they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in such county or counties, such percentage as will produce relative equal and uniform valuations between the several counties in the State; and the percentage added to or deducted from the valuations in each county shall be entered upon their records, and the valuations of the several counties, as equalized, shall be certified and signed by the chairman and secretary of the board, and filed in the office of the Auditor General, and shall be the basis for apportioning all State taxes until another equalization shall be made.*

1 Comp. L., Sec. 132, above quoted.

If the assessments of the different counties, as presented to the State Board of Equalization, are made at any basis less than cash value, the State board has no power to make any change in them unless "such assessment shall be determined relatively unequal."

6th. It is beyond question that the law recognizes that the provision requiring the local assessors to assess all property at its cash value is not a sufficient provision to insure to the taxpayers that such assessment will be made and uniformity of taxation secured.

The result of the provisions for assessment and equalization is this; not to secure the assessment and equalization of property *at its cash value*, but to so provide that if for any cause there is a failure by the local assessments to secure equality of burden by assessment at cash value, the taxpayers are not harmed, because by equalizing their assessments the same result is secured as would be secured were the assessments made at cash value. It is a most important measure of protection to the taxpayers whose taxation is dependent upon the assessments made by different assessing officers.

7th. *The taxation of the railroads is determined by these very same local assessments.* If they are made at one-half the cash value of the property assessed it doubles the amount of taxation upon the railroads, unless the property of the railroads is also assessed at relatively the same valuation.

Equalizing the two assessments would furnish the same protection to the railroad companies which equalization furnishes to the other taxpayers. There is precisely the same need of protection by equalization in the case of the railroads as in the case of the other taxpayers.

When the assessments are unequally made so that unequal and unjust burdens are thereby put upon a portion of the taxpayers, the Courts can afford no remedy to the taxpayers who are injured, however great the injury may be, unless the action of the assessors is shown to be fraudulent or an intentional violation of the law.

For errors, or diversities, or mistakes of judgment of the assessors, the Courts afford no relief. But for inequality in the assessments arising from any cause whatever, *equalization is the remedy provided by statute, and*



*affords protection as complete as it is practicable for the law to provide.*

Cooley on Taxation, pp. 748, 749 (2nd Ed.), and cases cited.  
 Judson on Taxation, Secs. 464, 465, 466,  
 Hazzard vs. O'Bannon, 36 Fed., 854, at 855, 856,  
 State Railroad Tax Cases, 92 U. S., 575, 615, 616,  
 Pelton vs. National Bank, 101 U. S., 143,  
 National Bank vs. Kimball, 103 U. S., 732, at 734,  
 Hagar vs. Reclamation District, 111 U. S., 701, at 710, 711,  
 Iron Co. vs. City of Negaunee, 116 Mich., 430, at 435, 440,  
 Walsh vs. King, 74 Mich., 350, 355,  
 Merrill vs. Humphrey, 24 Mich., 170, at 173,  
 Porter vs. Rockford &c. R. R. Co., 76 Ill., 561, at 596,  
 C. B. & Q. R. Co. vs. Cole, 75 Ill., 591, at 592, 594.

The law upon this subject is well stated in Hazard vs. O'Bannon, 36 Fed., at pages 855, 856, as follows:

"The rule is also recognized in this State, and it is so held elsewhere, that a tax founded on a fraudulent assessment may be enjoined. By a fraudulent assessment is meant an assessment that is purposely made too high, with a view of casting an undue proportion of the public burdens on a certain taxpayer, or an assessment made in pursuance of a rule of valuation adopted by the assessor that is designed to operate unequally in the distribution of taxation. *Cummings vs. Bank*, 101 U. S., 154; *Hamilton vs. Rosenblatt*, 8 Mo., App., 240, 241; *Pacific Hotel vs. Lieb*, 83 Ill., 602; *Merrill vs. Humphrey*, 24 Mich., 172; *Cooley Tax'n*, (2nd Ed.) 784, 785, and cases cited. But in the absence of actual bad faith, or of such an utter disregard of official duty as to amount to bad faith, on the part of the assessor or board of assessors, the collection of a tax bill cannot be enjoined because through an error of judgment the assessment on which it is based is too high, either considered by itself or in comparison

with other assessments on similar property; nor can a tax-bill be enjoined because the assessment was conducted irregularly or erroneously, unless the error is so far vital as to render the assessment void. *Hamilton vs. Rosenblatt, supra*; *Everitt's Appeal*, 71 Pa. St., 216; *Kelly vs. Pittsburg*, 104 U. S., 78, and cases cited; *Meyer vs. Rosenblatt*, 8 Mo., App., 602; *Cooley Tax'n*, (2nd Ed.) 748, 775, and cases cited. It is also well settled that the sole remedy for an excessive or unequal assessment which has resulted merely from an error of judgment without the violation of any rule of law, is by an appeal to boards of review or equalization, when the State has created such boards for the purpose of correcting erroneous assessments; and it is generally held that the decision of such boards as to the value of property, and as to whether assessments are uniform in amount, are conclusive upon the taxpayer."

In *Hagar vs. Reclamation District*, 111 U. S., the Court say (pp. 710, 711):

"But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers in estimating the value act judicially; and in most of the states provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law to hear complaints respecting the justice of the assessments. The law, in prescribing the time when such complaints will be heard, gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law."

"In some states, instead of a board of revision, or equalization, the assessment may be revised by proceedings in the Courts and be there corrected if erroneous, or set aside if invalid; or objections to the validity or amount of the assessment may be taken when the attempt is made to enforce it. In such cases all the opportunity is given to the taxpayer to be heard respecting the assessment which can be deemed essential to render the proceedings due process of law."

8th. It is no answer to the objection made to said Act No. 173 to say that equalization is not necessary to the equal protection of the railroad companies, because the statutes of the State make it the duty of the Board of State Tax Commissioners to supervise the assessments of the other properties of the State, to the end that such other properties shall be assessed at their actual cash value.

The Board of State Tax Commissioners, at the time the taxes in question were levied, consisted of five members appointed by the governor. (The provisions of the statute as they then were are copied in Appendix C hereto).

Act No. 154, Laws 1899, p. 227, as amended by Act No. 174,  
Laws of 1901, p. 248.

As above shown, the law of the State made it equally the positive duty of the supervisors and local assessing officers, to assess the properties at their cash value.

If these officers in the performance of their duties made their assessments at cash value, there would be no occasion for the provision of the law requiring an equalization of their assessments. But the State recognizes the fact that these officers fail to make their assessments at cash value, and from that cause there would be unequal and unjust burdens cast upon taxpayers.

To prevent such injustice the equalization of their assessment is not only required, but no taxation based upon the assessments is valid unless such equalization is made.

*Precisely the same condition exists in respect to those taxpayers since the statute providing for the Board of State Tax Commissioners has been adopted.*

*If this board, by the supervision given to them in fact secured the assessment made by the supervisors and local assessing officers at actual cash value, there would be no occasion for the equalization of those assessments either by the township, city and village boards, or the boards of supervisors of the counties, or by the State Board of Equalization. But the State recognizes the fact that the supervision by the Board of State Tax Commissioners does not secure the assessment at the actual cash value, and, for the protection of all taxpayers of ad valorem taxes not included in said Act 173, requires the same equalization to be made as a condition of the validity of the enforcement of the tax levied against them.*

*So clearly is this the fact that by Subdivision 10 of Section 150 of said Act No. 154 (see Appendix C) it is made the duty of the Board of State Tax Commissioners to furnish information to the State Board of Equalization, to enable the latter board to perform their duties in equalizing the assessments of the counties.*

*By Section 152 of said act provision is made for submitting the assessment rolls made by the local assessors to the inspection of the State Board of Tax Commissioners prior to, and as a preparation for, submitting the assessments to the boards of supervisors for the equalization of the assessments.*

*These provisions of the act defining the duties of the State Board of Tax Commissioners are designed to make*

the equalization of the assessments of the taxpayers not taxed under said Act 173 *more effective for their protection.*

The same distinction is made, and the same protection by equalization is afforded to and is required for the taxpayers not included in said Act 173, and is denied to the railroad companies taxed under said act notwithstanding the power of supervision conferred upon the Board of State Tax Commissioners.

9th. The question is distinctly this: Does the State deny to the companies taxed under Act No. 173 the equal protection of the laws, by denying to them the protection of equalization of the assessment of their own property and the property of others by which the rate and amount of their taxation are determined, *while it affords to all other taxpayers of the State (corporations and all persons against whom ad valorem taxes are assessed) the protection of the equalization of the assessment of their own property and the property of others, by which the rate and amount of their taxation are determined?*

There is an immense number of corporations in the State of various classes which own a very large proportion of the entire property of the State, upon which ad valorem taxes are assessed, which corporations are not included in said Act No. 173.

Why should the protection which is furnished to corporations *not named in the act* be denied to the corporations *which are named in the act?*

The same reasons, arising from the same conditions, namely, protection from injury by unjust and unequal assessments, exist in the one case as in the other.

The granting the protection in the one case and denying it in the other is clearly a denial of the equal protec-

tion of the laws, and the denial of the protection of equal laws.

*It is class legislation.*

Railroad and Telephone Companies vs. Board of Equalizers,  
85 Fed., 302, at 306.

Nashville &c. R. R. Co. vs. Taylor, 86 Fed., 168, at 185, 186.

Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79.

Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, at 558.

Railroad Tax Cases, 13 Fed., 722, at 733.

County of Santa Clara vs. So. Pac. R. Co., 18 Fed., 385,  
at 399.

Lake Shore & Michigan So. R. R. Co. vs. Smith, 173 U. S.,  
684, at 691, 698, 699.

State vs. Jones, 51 Ohio, 492.

37 N. E., 945, at 948.

Burrows vs. Brooks, 113 Mich., 307, at 309.

Stimson vs. Muskegon Booming Co., 100 Mich., 347.

Park vs. Detroit Free Press Co., 72 Mich., 560.

Kuhn vs. Common Council of Detroit, 70 Mich., 534.

Brown vs. Alabama &c. R. Co., 87 Ala., 370.

6 Southern, 295.

Pearson vs. City of Portland, 69 Me., 278, at 281.

Yick Wo vs. Hopkins, 118 U. S., 356.

In re Yot Sang, 75 Fed., 983.

Louisville Trust Co. vs. Stone, 107 Fed., 305, 306, (C. C. A.)

In Railroad and Telephone Companies vs. Board of Equalizers, 85 Fed., 302, (decided Dec. 1897), bills were filed to restrain the Board of Equalization from certifying the assessed valuation of the companies' property for taxation on the ground (among others) that the assessment is relatively out of proportion to the taxable value at which other species of property in the State are assessed, whereby the properties of the companies are made to bear an undue proportion of the burden of the government, in violation of the Constitution of the State, and that said companies are also deprived of the equal pro-

tection of the law under the Fourteenth Amendment to the Constitution of the United States.

The Constitution of the State (Tennessee), provided that "All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

It was conceded in the case that the properties of the railroad and telephone companies were assessed at their value. The answer of the Board of Equalization was taken by the Court as admitting that the board made no effort to equalize the assessment of this class of property with the assessment made on other classes of property in the State. *The statute made no provision directing the assessors, or Board of Equalization to enter upon the duty of equalization for the purpose of avoiding the disproportion between the taxable valuation of the different properties.* Upon this subject the Court uses the following language, pages 305-306:

"Was the Board of Equalization under obligation, constitutional or legal, to equalize the assessment on railroad and telephone property with the assessment on other species of property subject to taxation? It is obvious enough that if the State adopts a system of taxation by which assessments are made through different officers, agencies or boards, the State is equally represented by every such board or agency, and, so far as substantial results are concerned, the case is just the same as if the State acted through one board only. This is plainly so and is recognized as being in *Missouri vs. Hannibal & St. J. R. Co.*, 135 Mo., 625, 37 S. W., 532. The provisions of the Constitution referred to, it must be borne in mind, are man-

datory and self-executing. *Levee Dist. vs. Dawson*, 97 Tenn., 160, 36 South W., 1041; *Hyatt vs. Allen*, 54 Cal., 353; and *Board vs. Patten*, 62 Mo., 444. This being so, no legislation was necessary to give effect to these provisions of the Constitution. The Constitution is the paramount law of the land, and its mandatory directions impose a duty upon the legislature in the exercise of the taxing power, and equally upon every administrative board or agency provided for the execution of the tax system. If there is a discrimination against this species of property, imposing an unconstitutional burden thereon, the result cannot be sustained; and this is equally so, whether such a result is due to erroneous action by the board, or to defect in the legislation, in not requiring equalization, and furnishing the means whereby this might be made real and effective. If the legislature had, in terms, undertaken to exempt this board from the duty of equalization, no person of ordinary intelligence would make any question that such act would have been unconstitutional. Again, if this particular revenue act be construed as not requiring equalization of the assessment on property of this character with assessments on other kinds of property separately treated, and could be regarded as constitutional in respect to the equality guaranty, although not making such requirement of equalization, we would clearly have an instance of special, partial and class legislation of the most obnoxious kind; for it is well known that the State, in regard to every other considerable class of property, has provided a board of equalization, charged with the duty of equalizing, and no discrimination in that respect could be made between the property now in question and other taxable property in the State."

It is submitted that this is a direct decision upon the point presented in the case at bar.



The paramount law of taxation in Michigan imposes upon the legislature of the State, in the exercise of the taxing power, the same duty in respect to the protection of the taxpayers by equalization of assessments, as was imposed upon the legislature of Tennessee. Here, as there, the legislature, "in regard to every other considerable class of property, has provided a board of equalization, charged with the duty of equalizing, and no discrimination in that respect could be made between the property now in question and other taxable property in the State." In both Tennessee and Michigan the Constitution intends and requires that taxation based upon the value of the different properties shall be equal taxation so far as it is affected *by values of the property taxed*. In other words, taxes shall not be made unequal by the adoption by different assessing officers of different basis of valuation for different properties. In Tennessee, as in Michigan, to provide against such unequal taxation of properties, other than railroad properties, an equalization of the assessments of those properties, was provided for, but was omitted in respect to railroad properties. Because of this discrimination, it was declared to be class legislation. *It is as plainly class legislation, or the denial of the equal protection of the laws, in Michigan as in Tennessee.*

Nashville &c. R. R. Co. vs. Taylor, 86 Fed., 168, was upon an application for a preliminary injunction to the State Board of Equalizers, to enjoin the certification of the assessment of the complainant's property.

The bill alleged among other grounds for relief that the plaintiff was deprived of the right of equalization under the laws applicable to railroad and telephone companies, while such equalization was provided for and allowed in respect to all other property in the State sub-

ject to taxation, and that in consequence of the denial of this right, complainant's property was assessed at twenty-five to forty per cent. more in proportion to value than other calsses of property in the State. This was claimed to be in violation of the State Constitution, and of the Fourteenth Amendment to the Constitution of the United States, in that the complainant was denied the equal protection of the laws. The provision of the State Constitution referred to is the same provision referred to above in *Railroad and Telephone Companies vs. Board of Equalizers*, 85 Fed., 302.

The bill was demurred to, and the hearing was on the demurrer upon the question of the jurisdiction of the Court to grant the injunction upon the averments of the bill. In sustaining the jurisdiction of the Court and referring to the ground of complaint above stated, the Court uses this language (pp. 184, 185, 186) :

"State action, to which the prohibitions of the Fourteenth Amendment extend, is not limited to a legislative enactment as it comes from the hands of the legislature, but extends to all instrumentalities and agencies officially employed in the execution of the law down to the point where the personal and property rights of the citizen are touched. Under any other interpretation it would be practically possible to reduce the constitutional guaranty to a mere *brutum fulmen*. A statute might be framed entirely fair upon its face, which, by the omission of necessary affirmative provisions, and a failure to contain needed restrictive directions, would furnish color of authority for practices thereunder which would be destructive of rights most carefully guarded by the Constitution. Such a result would be still more easily accomplished by legislation in respect to one class of citizens or property, and separate legislation in regard to another class in

relation to the same subject, containing such differences in provisions as to necessarily bring about 'clear and hostile discriminations against peculiar persons and classes,' and resulting in oppressive and forced contributions from one class as compared with the other; and such is, or may be, practically the result of the legislation in this State in respect to tax assessments, according to the construction put upon that legislation by the defendants, *for, while boards of equalization are created with express power to equalize assessments in regard to other species of property, and required to do so, the separate enactments in relation to railroad and telephone properties confer upon the assessors and board of equalization no such power, according to their construction of the acts and their action thereunder.* The board of equalizers construe the statute as requiring them to take the curious and self-inconsistent position that they are created a board of equalization, but without power to equalize. \* \* \* What must constitute a denial of the equal protection of the law will depend, in this view, in a large measure, upon what rights have been conferred, or protection extended, under the Constitution and laws of the particular State, in which the question arises. As the constitution and laws of the states vary, the proposition that each case must, to an extent, depend upon its own facts, is specially applicable to this class of cases. When the State itself undertakes to deal with its citizens by legislation, it does so under certain limitations, and it may not single out a class of citizens, and subject that class to oppressive discrimination, especially in respect to those rights so important as to be protected by constitutional guaranty." \* \* \*

"It may be true that the proposition that a tax statute, or the tax laid under a statute, is in violation of the Constitution of the State, is not of itself necessarily sufficient

to constitute a violation of the Fourteenth Amendment; but when, in addition to the violation of the State Constitution, the statute results in an arbitrary and oppressive discrimination in regard to a large class of citizens, or a large species of property, it is such class legislation and such denial of the equal protection of the laws as renders it obnoxious to the Fourteenth Amendment. *And the State Constitution is important in determining what the rights of the citizen are, and whether equal protection of the law is being denied. If this be not so, the result is that the Fourteenth Amendment must be regarded as failing to afford protection in respect of the most important of all property rights, and the most dangerous of all powers.*"

The opinion of Judge Clark in this case is referred to and approved in *Louisville Trust Co. vs. Stone*, 107 Fed., 305, 306, (C. C. A.)

The case was afterwards heard upon its merits upon the defendant's answer and evidence, the constitutional questions being purposely omitted, as stated by the Court, and an order was made in the complainant's favor, from this order an appeal was taken to the Court of Appeals, where the order was modified and affirmed.

In *Cotting vs. Kansas City Stock Yards Co.*, 183 U. S., 79, at page 110, Mr. Justice Brewer, delivering the opinion of the Court, says:

"It has been more than once said, judicially, that one of the principles upon which this government was founded is that of equality of right. It is emphasized in that clause of the Fourteenth Amendment which prohibits any State to deny to any individual the equal protection of the laws. That constitutional provision does not, it is true, invalidate legislation on the mere ground of inequality in

actual result. Tax laws, for instance, in their nature, are and must be general in scope, and it may often happen that in their practical application they touch one person unequally from another. *But that inequality is something which it is impossible to foresee and guard against, and therefore such resultant inequality in the operation of a law does not defeat its validity.*"

It can not be said that the inequality in the taxation of railroad properties under Act 173, and the other properties of the State, arising from the errors in the assessments of the properties by different officers, was impossible to foresee and guard against. It is plain to foresee and easy to guard against. Such inequality in the taxation of the different properties, *not taxed under said Act 173, arising from precisely such cause, was foreseen and guarded against by the provision for equalizing the assessments.*

In *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., this language is used (pp. 558, 559) :

"No rule can be formulated that will cover every case. But upon this general question we have said that the guaranty of the equal protection of the laws means '*that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.*' "

In the same case it is said (p. 560) :

"No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

10th. The right of the State to classify property for the purposes of taxation, and to impose different rates of taxation upon different properties is not questioned.

The contention is that the State can not by means of classification so frame its system of taxation as to deprive any class of taxpayers of their property without due process of law, or deny to them the equal protection of the laws.

When all the other taxpayers of ad valorem taxes are given a right of hearing before the legislative bodies which, by their action, determine the amount or rate of their taxation, the State can not by means of classification deprive the railroad companies of the like highly important right.

And when all such other taxpayers are furnished protection against unjust burdens of taxation arising from the failure of assessing officers to assess their property and the property of others upon the same basis by providing for such taxpayers an equalization of the assessments which determine the amount of their taxation, the State can not by means of classification deprive the railroad companies of like protection by means of equalization of the assessments which determine the amount of their taxation when, for lack of such protection, they will be subjected to like unjust taxation, and when by means of the like protection of equalization they will have like protection against such unjust taxation.

When the other taxpayers and the railroad companies may be unjustly taxed by reason of *the same assessments made by the same officers*, the State cannot by classification deny to the railroad companies the protection which it furnishes to the other taxpayers. The need for pro-

tection is the same in both cases, and in both cases the like means will furnish the like protection.

Real estate and properties devoted exclusively to agriculture may undoubtedly be classed by themselves for the purposes of taxation as well as may real estate and properties employed in the business of railroad transportation. But we submit that the proposition would not be entertained to uphold laws by which, under such classification, the properties employed in agriculture should have taken away from them the protection which they now have by the equalization of the assessments by which the amount of their taxation is determined and the protection which is now given them be given to the railroad companies.

11th. Since this suit has been instituted the legislature of Michigan has recognized the justice of the railroad companies' contention upon the subject of equalization and has, by Act No. 282, Laws 1905, Sections 13 and 14, p. 448, provided for an equalization by the State Board of Assessors of the other properties of the State paying ad valorem taxes and the railroad properties by empowering the State Board of Assessors to ascertain and determine *the true cash value of such other properties* for the purpose of determining the average rate of taxation levied upon those properties for the current year for state, county, township and municipal purposes, and the average rate of taxation of those properties upon the true cash valuation so determined by them is to be the rate of taxation of the railroad companies.

Said sections provide as follows:

Sec. 13. It shall be the duty of the said State Board of Assessors, not later than the fifteenth day of January, in each year, from the information contained in the reports required by the preceding section and from the in-

formation obtained by the members of said board, acting as members of the Board of State Tax Commissioners, under and by virtue of the authority conferred by act one hundred fifty-four of the public acts of eighteen hundred ninety-nine and the amendments thereof, and from such other information as may be obtained by said board or the members thereof from any other source, according to their best knowledge and judgment, to ascertain and determine the true cash value of all property of the State, other than that included upon said assessment roll, upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes for the current year, and shall enter the same upon its records forthwith, and not later than the fifteenth day of January in each year, the said Board of Assessors shall ascertain and determine the average rate of taxation levied upon such other property for the then current year by dividing the aggregate amount of ad valorem taxes levied upon such other property in the State for such purposes, as shown by the reports required by the preceding section, by the aggregate true cash value of such other property of the State, as determined by said board, which said rate so arrived at and determined shall be entered upon the records of the board. \* \* \*

Sec. 14. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll, opposite the descriptions of their respective properties.



## VII.

Said Act No. 173 denies to the companies, under its provisions, the equal protection of the laws in this: ~~That under its provisions, the equal protection of the laws is this:~~ That under the general laws of Michigan in the assessment of the personal property of the inhabitants of the State (other than the companies taxed under said act), the credits of such persons are assessed only so far as they exceed the amounts owed by such persons, whereas said Act No. 173 requires the assessment and taxation of the credits of said companies at their cash value without any deduction of the indebtedness owed by them. That is to say, the value of the personal property of said inhabitants consisting of credits is to be determined by deducting from the amount of the credits the amount of such person's indebtedness, whereas under said Act No. 173, in determining the value of the personal property of the companies consisting of credits no deduction of the indebtedness of the companies is allowed.

The Constitution of the State requires all assessments of property, not only of natural persons, but also of all corporations, to be at its cash value. Article XIV, Section 12 and Section 10.

Section 12 provides as follows: "All assessments hereafter authorized shall be on property at its cash value."

Section 10 provides as follows: "The legislature may provide for the assessment of property of corporations at its true cash value, by a State Board of Assessors, and for the levying and collection of taxes thereon."

The Constitution is imperative, as before pointed out, that taxation of all property which is made upon the basis

of valuation shall be made upon an assessment at the cash value thereof.

There is no opportunity for a distinction between natural persons and railroad companies upon that subject, yet by Act No. 173 the distinction is made.

1st. By said Section 5 of said act the property of the companies required to be assessed includes "all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, road-bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch-boards, and all other property used in carrying on the business of said corporations, or owned by them respectively, and all other real and personal property."

Section 6 requires railroad companies to make and file with the State Board of Assessors a statement showing "A detailed statement of the personal property, *including moneys and credits owned by the company in Michigan*, on the second Monday in April in the year in which the report is made, where situate, and the value thereof."

Section 7 imposes a penalty upon any company which refuses or neglects to file such report.

Section 8 provides that, "Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of December in each year, it shall be the duty of the said State Board of Assessors, to prepare an assessment roll as provided in section four of this act, upon which they shall assess *at the true cash value on the second Monday of April of the year in which the assessment is made all the property* of the companies herein enumerated subject to taxation under this act, which

said assessments shall not be final until reviewed as hereinafter provided."

Section 10 provides for the review and that "any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application, or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll may subpoena witnesses as provided in section three of this act and have such hearing as may be deemed necessary. \* \* \* After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided."

Section 18 provides that "if said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each."

It is a distinct and positive requirement of the act that the personal property of the railroad companies "includ-

ing credits owned by the company" shall be assessed at the cash value of the property, *including the cash value of the credits*. Upon this subject there is no discretion on the part of the State Board of Assessors. Their plain duty is to ascertain the cash value of the credits and assess them at that value, and if they assess the credits at less than they believe the true cash value to be they will be guilty of a misdemeanor.

The act is complete, covering the entire proceedings for the assessment of the companies' properties and the levy and collection of taxes.

There is no provision by which the companies are allowed to state or show their indebtedness, and if shown in any manner the State Board of Assessors are forbidden to consider them. They can no more consider them in determining the cash value of the companies' personal property or credits than they can consider them in determining the cash value of the companies' real estate.

The companies' indebtedness is as distinct and separate from their personal property and credits as from their real estate.

2nd. The general statute of the State by which the property of the State not included in said Act No. 173 is assessed for ad valorem taxes which was in force when said act was adopted and is still in force, authorizes the local assessors in determining the cash value of the personal property of natural persons, *consisting of credits*, to deduct from the amount of the credits the amount of the person's indebtedness, and authorizes the person assessed to state his indebtedness.

1 Comp. Laws, Secs. §324, §331, Subd. 6, Secs. §341, §342, Subd. Personal Property, Credits, 2, 3, Sec. §347.

(The provisions of the above sections are copied in the Appendix D).

The assessments of natural persons are in fact made as provided in the general statute by deducting indebtedness from credits. This has been so long both the statute and the practice in the State that the Courts take judicial notice that the assessments are so made.

3rd. The granting to natural persons under the general statute the right to have the cash value of their personal property which consists of credits to be determined by deducting from the amounts of the credits the amount of their indebtedness and withholding that right from the companies under said Act No. 173 is a denial of the equal protection of the laws.

*County of Santa Clara vs. So. Pac. R. R. Co.*, 18 Fed., 385,  
at 395, 396.

*The Railroad Tax Cases*, 13 Fed., 742, at 737.

*Russell vs. Crox*, 164 Mo., 60.

63 S. W., 853.

*Detroit Citizens' St. Ry. Co. vs. Common Council of Detroit*,  
125 Mich., 673, at 694.

In *County of Santa Clara vs. Southern Pacific R. Co.*, 18 Fed., 385, the Constitution of California provided that in assessing property which was incumbered by mortgage the value of the mortgage was to be deducted from the value of the property mortgaged and the balance assessed to the owner of the property, except as to railroad and other *quasi* public corporations, whose property was assessed to them at its value without deducting the value of any mortgage thereon.

Holding the provisions of the Constitution invalid, as a denial of the equal protection of laws, Mr. Justice

Field uses this language upon this subject (pp. 395, 396) :

"The principle which sanctions the elimination of one element in assessing the value of property held by one party, and takes it into consideration in assessing the value of property held by another party, would sanction the assessment of the property of one at less than its value,—at a half or a quarter of it,—and the property of another at more than its value,—at double or treble of it,—according to the will or caprice of the State. To-day railroad companies are under its ban, and the discrimination is against their property. To-morrow it may be that other institutions will incur its displeasure. If the property of railroad companies may be thus sought out and subjected to discriminating taxation, so, at the will of the State, by a change of its Constitution, may the property of churches, of universities, of asylums, of savings banks, of insurance companies, of rolling and flouring mill companies, of mining companies, indeed, of any corporate companies existing in the State. The principle which justifies such a discrimination in assessment and taxation, where one of the owners is a railroad corporation and the other a natural person, would also sustain it where both owners are natural persons. A mere change in the State Constitution would effect this if the federal Constitution does not forbid it. Any difference between the owners whether of age, color, race, or sex, which the State might designate, would be a sufficient reason for the discrimination.

In *The Railroad Tax Cases*, 13 Fed., 722, the same distinction was involved in the assessment of the property of railroad companies and of other persons. Mr. Justice Field says (p. 737) :

"The discrimination complained of arises from the dif-

ferent rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value; as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained, the law fixed the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendant's property than upon the property of individuals similarly incumbered, or rather requires the assessor of the defendant's property, in estimating its value, to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value. It is not classifying property to provide that the property of certain parties, which has a mortgage upon it, shall be assessed at its value after deducting the mortgage; and that the property of other parties, also having a mortgage upon it, shall be taxed at its full value without any deduction. That is not providing for a different rate of taxation for different kinds of property, but for unequal taxation according to the character of the owner."

Circuit Judge Sawyer upon the same subject says (p. 773):

"If the arbitrary discrimination and classification found in this case can be legally made under the Constitution and the law of the land, then the Constitution or the law can be so framed as to dispose of a man's rights in property of all kinds by arbitrary classification and definition, without regard to the real facts, circumstances, or

condition of the property. A person may be classified and defined out of the equal protection of the law; and if so with reference to this provision, he can also be classified and defined out of uniformity in the operation of the law in other particulars; out of the protection of due process of law, and of the provision forbidding a law impairing the obligation of contracts, or taking property for public use without just compensation; and, indeed, out of all the guaranties of the Constitution, State or National."

In *Russell vs. Croy*, 164 Missouri, 69, an amendment to the Constitution of Missouri contained a like provision for deducting the value of a mortgage from the value of the property covered by the mortgage in assessment for taxation, except in the case of railroad and other *quasi* corporations, and the provision was held invalid by the Supreme Court, following the decisions in the 13 Federal and 18 Federal above cited.

In *Citizens' Street Railway Co. vs. Common Council*, 125 Michigan, 673, the company was one of the companies which is within the provisions of said Section 3842 of the general tax law providing for the assessment of the *personal property* of corporations by deducting from the cash value of their *personal property* the total of all their bona fide indebtedness, except indebtedness for current expenses, while by said Section 3831 the amount of an individual's indebtedness could be deducted only from *his credits*.

The Court held said provision of Section 3842 invalid (p. 694): "Because not uniform with the general method of deducting debts, viz.: from credits only."

That case is plainly a case in which the rate of taxation



which was imposed upon the personal property of the companies by the statute was the same as the rate of taxation imposed upon the personal property of natural persons, but the amount of taxation was made unequal, because in determining the cash values of the companies' personal property a deduction of their indebtedness was made, while in determining the cash value of the personal property of natural persons no deduction of indebtedness was allowed, except as to such personal property as consists in credits.

In the case of natural persons the *cash value* of personal property was made the basis of assessment, and in the case of the Street Railway Companies the basis of assessment was not the *cash value*, but from the cash value was deducted the debts, while the Constitution requires all assessments to be at the cash value.

It presented a case where there was not an equal protection of the law, or where there was not a protection of equal laws.

It is submitted that if the provision of Section 3842 is invalid the provisions of said Act No. 173 are invalid for precisely the same reasons. The same requirements of the Constitution that all assessments shall be made at cash value applies to railroad companies and to natural persons.

By the general statute (said Section 3831, Subd. 6) the cash value of credits of private persons is determined to be the amount of the credits *less the indebtedness*, while by Act No. 173 the personal property of the railroad companies, *including the credits*, is required to be assessed at its cash value, and no deduction for indebtedness is allowed.

The purpose and provisions of Act No. 173 require the assessment of the credits of the railroad companies at

their true cash value, and forbid any other value to be adopted.

It could not be of any avail to the companies to make any showing to the State Board of Assessors relating to their indebtedness, and they were therefore not required to attempt any such showing.

Hills vs. Exchange Bank, 105 U. S., 319,

Whitbeck vs. Mercantile National B'k, 127 U. S., 193

In the cases upon this subject of *Stanley vs. Supervisors of Albany*, 121 U. S., 535, and *Supervisors vs. Stanley*, 105 U. S., 305, there was opportunity for the parties complaining of the assessments to make a showing to the assessors of their indebtedness, and there was authority in the assessors to make the deduction, and a correction of the assessment could thereby be made.

4th. By reason of the provision requiring the credits of the railroad companies to be assessed at their full cash value and allowing no deduction for credits being invalid, either the entire act fails or so much of the act as requires the credits of the companies to be assessed at all fails.

That provision of the act can not be retained in part, and rejected in part, nor can a clause or provision be added to it by the Court. No other assessment can be made of the credits than at their full cash value and comply with the terms of the act.

The entire provision for their assessment must therefore be held void because the omission of them from the assessment by the State Board of Assessors upon any other ground is forbidden, and would be a misdemeanor on the part of the members of the board.

It is very clear that it is the intent of the act that the assessment of the railroad company's property shall

include the company's property which consists in its credits.

The presumption can not be admitted that the legislature would have adopted legislation for the taxation of railroad companies in which their property consisting of credits would be exempted wholly from taxation. As the act can not be enforced without such omission, and as thereby the purpose of the legislation would be defeated the act falls.

### VIII.

The taxation under the provisions of said Act No. 173 is not authorized by the power reserved to the State to alter, amend or repeal the statutes under which the railroad companies were organized.

The act applies to the properties which had been previously acquired by the railroad companies and were possessed and owned by them at the time of the adoption of the act.

It is not questioned that in authorizing the formation of corporations and granting to them their operating franchises, the State may impose such conditions in respect to taking by taxation the properties of the corporations thereafter to be acquired by them as the legislature may from time to time deem proper, but the State under said reserved power to alter or amend does not possess the same power of taxation in respect to the property of the corporations which has been acquired by them under charters which were free from such conditions.

As to property so acquired, the corporations are entitled to the same protection of due process of law, and the

equal protection of the laws which natural persons have in respect to their property.

There can be no taxation of such property of the corporations under the reserved power of amendment or alteration which does not afford such protection.

Sinking-Fund Cases, 99 U. S., 700, at 720,

Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 362, at 399,

St. Louis &c. R. Co. vs. Paul, 173 U. S., 404, at 408,

Lake Shore &c. R. Co. vs. Smith, 173 U. S., 684, at 690,

Louisville &c. Ferry Co. vs. Kentucky, 188 U. S., 385, at 398,

Greenwood vs. Freight Co., 105 U. S., 13, at 19,

Detroit vs. Detroit &c. Plank Road Co., 43 Mich., 140, at 147,

148,

People vs. Lake Shore &c. R. Co., 52 Mich., 277, at 286,

Commonwealth vs. Essex Co., 13 Gray, 239, at 253,

People vs. O'Brien, 111 N. Y., 1.

Amendments made to govern corporations in the exercise of their operating franchises have been sustained in numerous cases cited upon the part of the defense in the discussion of this suit, but they do not involve the questions presented by the scheme of taxation against which the complainant protests.

BENTON HANCHETT,

*Of Counsel for Complainant.*

O. E. BUTTERFIELD,

*Solicitor for Complainant,*

A. C. ANGELL,

HENRY RUSSELL,

ASHLEY POND,

LLOYD W. BOWERS,

*Of Counsel.*

## APPENDIX A.

Provisions of Act No. 173, entitled, "An Act to provide for the assessment of the property of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes."

Section 1. That the Board of State Tax Commissioners created under the laws of this State, shall ex officio constitute a State Board of Assessors, one of whom shall be elected chairman of said board.

Section 2. The secretary of the Board of State Tax Commissioners shall be ex officio secretary of the State Board of Assessors without extra compensation, and shall keep a record of all its proceedings in addition to such other duties as may be required of him by said board, and shall devote his whole time to the duties of his office. In addition to the secretary said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act: *Provided*, That the compensation paid for such clerical assistance shall not in any case exceed one thousand dollars for each person employed, per annum: *Provided further*, That said board may employ such other assistance as may be necessary, with the consent of the Governor and the Board of State Auditors. The compensation of the said secretary and clerks, and all other necessary expenses incurred in carrying out the provisions of this act, shall be allowed by the Board of State Auditors upon proper vouchers approved by the chairman and secretary of the

board, and paid by the State Treasurer out of the general fund.

Section 3. Said board shall have access to all books, papers, documents, statements and accounts, on file or of record in any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. It shall have the right to subpoena witnesses, upon a subpoena signed by the chairman of said board and attested by the secretary thereof, delivered to such witnesses, which subpoenas may be served by any person authorized to serve subpoenas from Courts of record in this State, and the attendance of witnesses may be compelled by attachment, to be issued by any Circuit Court in this State, upon proper showing that such witness has been properly subpoenaed, and has refused to obey such subpoena. The person appearing in response to such subpoena shall receive like compensation as is allowed by the statutes of this State to witnesses in the Circuit Court, to be allowed by the Board of State Auditors upon the presentation of a copy of such subpoena, with the number of days' service and mileage endorsed thereon and approved by a member of said Board of Assessors, or the secretary thereof. The person serving such subpoena shall receive the same compensation now allowed to sheriffs or other officers for serving subpoenas. Said board shall have power to examine witnesses under oath to be administered by any member of the board, or by the secretary thereof. It shall have the right to inspect and examine the books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board, and if such corpora-

tion, firm or individual refuse to permit said inspection and examination, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall, for each such refusal, neglect or failure, forfeit the sum of five hundred dollars to the State, the sum so forfeited to be recovered in a proper action brought in the name of the people of the State of Michigan, in any Court of competent jurisdiction.

Section 4. It shall be the duty of said board to make an annual assessment upon an assessment roll to be prepared by said board, of the property having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, express companies doing business within this State, car loaning companies, and refrigerator and fast freight line companies, and all other corporations owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State.

Section 5. The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, road-bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch-boards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the

other property: *Provided however*, That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities in which the same may be situate. The term company, corporation or association, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast freight line company, and any and all other corporations subject to taxation under this act. The term "property having a situs in this State" shall include all the property real and personal, of the corporations enumerated in this act, owned, used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined.

Section 6. The several corporations enumerated in this act doing business in this State, shall annually, between the first and thirtieth days of June in each year, under the oath of the president, secretary, treasurer, superintendent or chief officer of such company, make and file with the State Board of Assessors, in such form as said board may provide, upon blanks to be furnished by said board, a statement containing the following facts:



### Railroad, Union Station and Depot Companies.

The blanks furnished to railroad and union station and depot companies, shall provide for the following information:

First. The name of the company;

Second. The nature of the company, and under the laws of what State or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and postoffice address of the chief officer or managing agent of the company in Michigan;

Sixth. The number of shares of capital stock;

Seventh. The par value and market value, or if there be no market value, the actual value, of the shares of stock on the second Monday of April of the year in which the report is made;

Eighth. A detailed statement of the real estate owned by the company in Michigan, and where situate, and the value thereof;

Ninth. A detailed statement of the personal property, including moneys and credits owned by the company in Michigan, on the second Monday in April in the year in which the report is made, where situate, and the value thereof;

Tenth. The total value of the real estate owned by the company situate outside of Michigan;

Eleventh. The total value of the personal property of the company situate outside of Michigan;

Twelfth. The whole length of their lines, and the length of so much of their lines as is within or is without Michi-

gan, which lines shall include what said railroad companies control and use as owners, lessees, or otherwise;

Thirteenth. A statement of the entire gross receipts of the companies, from whatever source derived, for the year ending the second Monday of April in the year for which the report is made;

Fourteenth. Such other facts and information as said board may require, in the form of the returns prescribed by it.

### Express Companies.

The blanks furnished to express companies shall provide for the following information:

First. The name of the company;

Second. The nature of the company and under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and postoffice address of the chief officer or managing agent of the company in the State of Michigan;

Sixth. The number of shares of capital stock, (a) authorized, (b) issued;

Seventh. The par value and market value, or if there be no market value, the actual value of the shares of stock, together with the total amount of bonded indebtedness, on the second Monday of April of the year for which the report is made;

Eighth. The situation, income and value in detail of its real estate in this State;

Ninth. The total income from and cash value of all its real estate situated outside of this State;

Tenth. A full and correct inventory, at the true cash value, of its personal property, including moneys and credits, within this State;

Eleventh. The true cash value of all its personal property, including money and credits without this State;

Twelfth. The whole length and names of railroad lines and water and stage routes over which it did business, and separately, in detail, the portions of such lines and routes within this State, and the portion of such routes over navigable waters of the United States within this State;

Thirteenth. Such other facts and information as may be deemed necessary by the State Board of Assessors, or any member thereof, to the proper assessment of the property of such company.

#### Car Loaning, Stock Car, Refrigerator and Fast Freight Line Companies, and other Car Companies.

The blanks furnished to car loaning, stock car, refrigerator and fast freight line companies shall provide for the following information:

First. The corporate name of the company;

Second. The nature of the business of said company, and under the laws of what State or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The location of its principal office in the State of Michigan, together with the name and address of the chief officer or managing agent of the company in Michigan;

Sixth. The total number of cars and rolling stock of any such corporation run over or operated upon any line or

lines of railroad within this State each day during the entire year preceeding the date of making and filing such report;

Seventh. The cost of construction of each of said cars;

Eighth. The length of time the same has been in service;

Ninth. The cash value of each of said cars so operated and run in this State, at the time of making and filing such report;

Tenth. And such other and additional information as may be deemed necessary by said board, or any member thereof, to the proper assessment of the cars of such company in this State in accordance with the provisions of this act and to the performance of the duties imposed upon it hereby.

Section 7. Blanks for making the statements provided for in section six shall be furnished to such companies on making application to said board: *Provided*, That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other State officers. In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the board shall inform itself as best it may on the matters necessary to be known, in order to discharge its duties with respect to the assessment of the property of such company. Any company which shall refuse or neglect to make the report required by this act within the time specified, shall be subject to a penalty of five hundred dollars for each day of the continuance of such neglect or refusal to file said report, to be recovered in a proper action brought in the name of the people of the State of Michigan in any Court of competent jurisdiction.

Section 8. Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of December in each year, it shall be the duty of the said State Board of Assessors, to prepare an assessment roll as provided in section four of this act, upon which they shall assess at the true cash value on the second Monday of April of the year in which the assessment is made, all the property of the companies herein enumerated subject to taxation under this act, which said assessments shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and the true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of such companies filed in the office of any officer of this State, and such other evidence as may be obtainable bearing thereon. In determining the true cash value of the property of railroad and union station and depot companies which own, lease or operate lines partly within and partly without this State, the said board shall be guided in ascertaining the property subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without this State. In determining the cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebtedness of such express company. From the amount so obtained and determined, said board shall deduct the actual value of all real estate owned by it as ascertained by said board, and the actual value of all its

personal property which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: The said board shall then divide the amount as obtained above by the total number of miles of railroad, stage, water and other routes over which the company did business, to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this State, exclusive, however, of the number of miles of water routes over the navigable waters of the united State within this State, to which result shall be added the value of all real estate owned by such express company in this State, as determined by said board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company subject to assessment and taxation in this State. In ascertaining the cash value of the property of car loaning, stock car, refrigerator, fast freight line and other car companies subject to taxation under this act, they shall ascertain the average number of cars used in this State during the year preceding the date of the filing of the report mentioned in the preceding section, such average to be determined by dividing the total number of cars so used or operated within this State during said year by the total number of days on which said cars were so used or operated within this State; and they shall also ascertain the average cash value of such average number of cars, and from said data the total valuation shall be determined and shall be the assessment against the property of said corporation.

Section 9. Upon said assessment roll, after the names of each of the companies assessed thereon, shall be placed

a general description of the properties of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. In the case of railroad, union station and depot companies, such general description may be as follows: "Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a State Board of Assessors." In the case of car loaning, stock car, refrigerator and fast freight line and other car companies, the following general description may be used: "Cars subject to taxation by a State Board of Assessors." In the case of express companies, the following general description may be used: "Property subject to taxation by a State Board of Assessors." In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of said companies so assessed.

Section 10. On the third Monday of December in each year, it shall be the duty of the State Board of Assessors to meet at the State Capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll, may subpoena witnesses as provided in section three of this act,

and have such hearing as may be deemed necessary. In case it shall appear or be made to appear to the members of said board, acting in review for assessment purposes, that the property of any corporation subject to taxation under the provisions of this act shall have been omitted from said assessment roll, it shall place the same thereon and make the assessment thereof as required in sections eight and nine of this act: *Provided*, That any such assessment shall take place in time to allow five full days for the review of the same before the expiration of the time herein provided for the completion of the review. After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided. After said board shall have completed the review of said roll, a majority thereof shall certify under their hands officially, and spread on said roll, a certificate to the effect that the same has been acted upon and reviewed in accordance with law, which certificate shall state all the alterations, changes, corrections and additions made in or to the assessment or valuation of the property appearing on said roll.

Section 11. It shall be the duty of the county clerk in each county in this State, as soon as possible after the equalization of the board of supervisors of his county of the assessment rolls of the several municipalities therein, and not later than the first day of November in each year, to make a report, duly certified to the State Board of Assessors, of the record of such equalization and of the record



required to be made under section thirty-seven of the general tax law, being section three thousand eight hundred sixty of the compiled laws of eighteen hundred and ninety-seven, as appears upon the records of such board of supervisors, which report shall, among other things, contain a statement of the amount of ad valorem taxes to be raised in the several municipalities of such county for state, county, municipal, township, school and other purposes, and a statement of the aggregate valuation of the property in each of said several municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It shall be the duty of the supervisor or other assessing officer of cities and villages in this State governed by special charters, which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purposes of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make, within the time above limited, a properly certified report to the State Board of Assessors of all ad valorem taxes raised in any of said municipalities, which have not been reported to the board of supervisors for the purposes of equalization and review. In case any county clerk or any supervisor or assessing officer shall neglect or fail to make the report by this section required, within the time limited, the said State Board of Assessors shall inspect and examine, or cause an inspection and examination of the records of said board of supervisors, or in cities affected by this section, an examination of the records of the proper officer, for the purpose of procuring the information required for the purpose of arriving at the average rate of taxation in this State; and the said board, in addition thereto, may require such reports on blanks which it shall prepare and furnish therefor, from

all county, state and municipal officers, as it shall deem necessary to the accomplishment of the purpose of this act. Any county clerk, supervisor or assessing officer who shall fail to make the report required by this section shall be subject to a penalty of one hundred dollars, to be recovered in a proper action in the name of the people of the State of Michigan, in any Court of competent jurisdiction.

Section 12. As soon as the reports required by the preceding section to be filed have been filed, or the information therein required to be procured shall have been procured, and not later than the fifteenth day of December in each year, the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined.

Section 13. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties. After the completion of said tax roll, and prior to the first day of February in each year, the said board shall attach thereto a certificate signed by the members of the board, or a majority thereof, which shall be as follows: "We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast

freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for state, county, township, school, municipal and other purposes, levied through the State during the present year, as determined by us." The said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer. The said taxes shall be payable on the first day of March following the assessment and levy thereof, and shall be in lieu of all taxes for State and local purposes, not including special assessments on property particularly benefitted, made in any county, city, village or township. All taxes not paid before the first day of April in the year in which the same are payable shall bear interest at the rate of one per cent. per month thereafter. The taxes so extended against said companies shall become forthwith a debt due from each of said companies to the State, and shall constitute a lien upon all the property of said companies, real, personal and mixed, from the time of the extension until the payment thereof, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided. The State Board of Assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the State Board, or a majority of them, commanding the Auditor General to collect the several sums mentioned in

the last column of such roll, and being the sum for which the said company was assessed and was liable to pay for a tax upon its property under the provisions of this act for the purposes provided for in this act; and the said warrant shall authorize and command the Auditor General, in case any corporation named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of such sale as provided for in the general laws of this State for the sale of property seized for taxes and offered for sale: *Provided*, He may bring an action in the name of the people of the State of Michigan in any Court of competent jurisdiction in the State of Michigan, or in any other state, for the enforcement of said lien, and upon recovery of judgment or decree therein the same may be collected by execution, levy and sale, as in other cases, upon judgments in Courts of Record.

Section 14. If any Court of competent jurisdiction shall adjudge that any tax levied under the provisions of this act is illegal on account of any irregularity or informality in the determination of the average rate of taxation required to be ascertained and determined by said State Board of Assessors, or for the reason that such average rate has not been ascertained and determined according to law, it shall be the duty of the said State Board of Assessors, whether any part of the taxes assessed and levied have been paid or not, to re-determine and re-asertain the average rate of taxation throughout the State in accordance with law, and when such re-determination and re-ascertainment has been had, to make a duplicate of the

original assessment roll and to extend the taxes thereon according to such re-determined and re-ascertained average rate, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as an original assessment made in accordance with law. All proceedings on the re-determination and re-ascertainment of such average rate and for the extension and collection of taxes upon said duplicate assessment roll shall be conducted in the method originally provided for, so far as may be. Whenever any sum or part thereof levied upon any property subject to taxation under this act so set aside has been paid and not refunded, the payment so made shall be applied upon the re-assessment upon said property, and the re-assessment to that extent shall be deemed to be satisfied.

Section 15. No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any Court of this State on account of any irregularity in any assessment or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this State is in accordance with the Constitution and statutes of this State.

Section 16. All taxes collected under this act shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest

and principal of the State debt, in the order herein recited until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund; and such taxes as are collected under the provisions of this act shall be treated and disbursed as specific taxes are now treated and disbursed: *Provided, however,* That if any of the corporations, companies or associations herein named were not paying specific taxes to this State on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the State.

Section 17. The first assessment under this act shall be made as herein required in the year nineteen hundred and two. Nothing herein contained shall be deemed a waiver or affect the collection of the specific taxes required to be paid by the companies hereby affected, on the first day of July in the year nineteen hundred and one, and on the first day of July in the year nineteen hundred and two, under the general laws upon the property or business of such companies operated within this State. The existing laws providing for the collection of such specific taxes shall be continued in force until the collection and payment of all taxes levied thereunder for the year nineteen hundred and one and previous years.

Section 18. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail

not exceeding one year, or by a fine not exceeding five thousand dollars each.

Section 19. If any person, company, association or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any member of said board, during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the State the sum of ten thousand dollars for each such offense, to be recovered in an action in the name of the people of the State of Michigan, in any Court of competent jurisdiction. And the recovery of such fine under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

Section 20. All other acts or parts of acts, whether contained in any acts for the incorporation of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, or in any other law of this State, so far as such acts or parts of acts are inconsistent with this act, and no further, are hereby repealed, except as herein expressly stated: *Provided however*, That all rights which the State now has under any of said acts, for taxes or penalties, shall not in any way be affected by this act, and shall not constitute a bar to any prosecution or recovery on account of such taxes or penalties.

## APPENDIX B.

Provisions of 1 Compiled Laws of Michigan for supplying cities and villages with water.

Sections 2890, 2891, 3247, 3248, 3416.

Section 2890. Any village having a resident population of five hundred or over shall have authority to purchase or construct and maintain water works for the introduction of water into the village and supplying the village and the inhabitants thereof with pure and wholesome water; for the extinguishment of fires; the ordinary and extraordinary uses of the inhabitants thereof and for such other purposes as the council may prescribe.

Section 2891. The village may acquire, purchase, erect and maintain such reservoirs, canals, aqueducts, sluices, buildings, engines, water wheels, pumps, hydraulic machines, distributing pipes and other apparatus, appurtenances and machinery, and may acquire, purchase, appropriate and own such grounds, real estate, rights and privileges as may be necessary and proper for the securing, construction, and maintenance of such water works.

Section 3247. Any city incorporated or re-incorporated under the provisions of this act, shall have authority to purchase or construct new and to maintain and extend existing water works for the introduction of water into such city, and supplying the same and the inhabitants thereof with pure and wholesome water for the ordinary and extraordinary uses of the inhabitants thereof, the extinguishment of fires and for such other purposes as the council may prescribe.

Section 3248. Such city may acquire, purchase, erect and maintain such reservoirs, canals, aqueducts, sluices,



buildings, engines, water wheels, pumps, hydraulic machines, distributing pipes and other apparatus, appurtenances and machinery, and may acquire, purchase, appropriate and own such grounds, real estate, rights and privileges as may be necessary and proper for the securing, construction and maintenance of such water works.

Section 3416. *The People of the State of Michigan enact*, That it shall be lawful for any city or incorporated village in this State to borrow any sum of money to be used exclusively for the purpose of purchasing grounds, rights, privileges, materials, and in making improvements connected with, and for the sole purpose of supplying such city or village, and the inhabitants thereof, with water: Provided, That the total sum borrowed and raised by tax by any such municipality the first year shall not exceed ten per cent. of the assessed valuation of such municipality as contained in the last preceding assessment roll of the same; And provided, That no more than five per cent. shall be borrowed during any one year thereafter, and that the rate of interest shall not exceed ten per cent. upon any indebtedness contracted under the provisions of this act.

Provisions for supplying cities and villages with gas, electric and other lights.

Sections 3440, 3437.

Section 3440. *The People of the State of Michigan enact*, That it shall be lawful for any city or incorporated village in this State not having more than ten thousand inhabitants, which now own and operate works for the purpose of supplying such city or village with electric light and lighting their streets and other public places with electric light, to furnish and supply electric light to

the inhabitants of such cities or villages upon such terms and under such conditions as the common council may deem expedient.

Section 3437. *The People of the State of Michigan enact*, That it shall be lawful for any city or incorporated village in this State, to acquire by purchase, or to construct, operate and maintain, works for the purpose of supplying such cities or villages and the inhabitants thereof with gas, electric or other lights, or to contract for the furnishing thereof, at such times and on such terms and conditions as the common council of any such city or the board of trustees in any such village shall direct.

Provisions by which cities and villages may purchase rights of toll road companies.

Section 3446. *The People of the State of Michigan enact*, That any city or village of the State in which any toll road company has the right to maintain gates or collect toll on any street or highway within said city or village may purchase all the rights of said company in such street or highway, at a valuation to be agreed upon between the common council of the city or village and the board of directors of such toll road company.

Provisions for establishing Fire Departments.

Section 2878. The council shall have power to enact such ordinances and establish and enforce such regulations as they shall deem necessary to guard against the occurrence of fires and to protect the property and persons of the citizens against damage and accident resulting therefrom; and for this purpose to establish and maintain a fire department; to organize and maintain fire companies; to employ and appoint firemen; to make and

establish rules and regulations for the government of the department, the employes, firemen and officers thereof; and for the care and management of the engines, apparatus, property, and buildings pertaining to the department.

Section 2879. The council may purchase and provide suitable fire engines and apparatus for the extinguishment of fires; and may sink wells and construct cisterns and reservoirs in the streets, public grounds, and other suitable places in the village, and make all necessary provisions for a convenient supply of water for the use of the department.

Section 2880. The council may also provide or erect all necessary buildings for keeping the engines, carriages, teams and fire apparatus of the department.

Section 3277. The council of any city shall have power to enact such ordinances and establish and enforce such regulations as they shall deem necessary to guard against the occurrence of fires, and to protect the property and persons of the citizens against damage and accident resulting therefrom; and for this purpose to establish and maintain a fire department; to organize and maintain fire companies; to employ and appoint firemen; to make and establish rules and regulations for the government of the department, the employes, firemen and officers thereof; and for the care and management of the engines, apparatus, property and buildings pertaining to the department; and prescribing the powers and duties of such employes, firemen and officers.

Section 3278. The council may purchase and provide suitable fire engines and such other apparatus,

instruments and means for the use of the department as may be deemed necessary for the extinguishment of fires; and may sink wells and construct cisterns and reservoirs in the streets, public grounds and other suitable places in the city; and make all necessary provisions for a convenient supply of water for the use of the department.

Section 3279. The council may also provide or erect all necessary and suitable buildings for keeping the engines, carriages, teams and fire apparatus of the department.

Provisions for acquiring and maintaining parks, public grounds, buildings and markets.

Section 2772. Any village may acquire, purchase and erect such public buildings as may be required for the use of the corporation, and may purchase, appropriate, and own such real estate as may be necessary for public grounds, parks, markets, public buildings, and other purposes necessary or convenient for the public good, and for the execution of the powers conferred in this act; and such building and grounds, or any part thereof, may be sold at public sale, or leased, as occasion may require; provided, however, That no public parks shall be sold without the consent of a majority of the qualified electors of the village.

Section 3152. Any city may acquire, purchase and erect all such public buildings as may be required for the use of the corporation, and may purchase, acquire, appropriate and own such real estate as may be necessary for public grounds, parks, markets, public buildings, and other purposes necessary or convenient for the public good, and the execution of the powers conferred in this act; and such

buildings and grounds, or any part thereof, may be sold, leased and disposed of as occasion may require.

Section 3153. When the council shall deem it for the public interest, grounds and buildings for city prisons, work-houses and other necessary public uses, may be purchased, erected and maintained beyond the corporate limits of the city; and in such cases the council shall have authority to enforce beyond the city limits, and over such lands and buildings and property, in the same manner and to the same extent as if they were situated within the city, all such ordinances and police regulations as may be necessary for the care and protection thereof, and for the management and control of the persons kept and confined in such prisons, work-houses or hospitals.

**Provisions for Libraries and Reading Rooms.**

Sections 3107, sub. 38, and 3449, 3458, and  
2 Compiled Laws, Sections 4757, 4763.

Section 3107, sub. 38. Every city incorporated under the provisions of this act, shall, in addition to such other powers as are herein conferred, have the general powers and authority in this chapter mentioned; and the council may pass such ordinances in relation thereto, and for the exercise of the same, as they may deem proper, namely:

Thirty-eight. To establish and maintain a public library, and to provide a suitable building therefor, and to aid in maintaining such other public libraries as may be established within the city by private beneficence as the council may deem to be for the public good.

Section 3449. *The People of the State of Michigan enact*, That the city council of each incorporated city shall have power to establish and maintain a public library and

reading room, for the use and benefit of the inhabitants of such city, and may levy a tax of not to exceed one mill on the dollar annually on all the taxable property in the city, such tax to be levied and collected in like manner with other general taxes of said city, and to be known as the "library fund."

Section 3458. When fifty voters of any incorporated village or township shall present a petition to the clerk of the village or township, asking that a tax may be levied for the establishment of a free public library, in such village or township, and shall specify in their petition a rate of taxation, not to exceed one mill on the dollar, such clerk shall, in the next legal notice of the regular annual election in such village or township give notice that at such election every voter may vote "for a mill tax, for a free public library," or "against a mill tax, for a free public library," specifying in such notice the rate of taxation mentioned in such petition; and if the majority of all the votes cast in such village or township shall be for the tax for a free public library, the tax specified in such notice shall be levied and collected in like manner with other general taxes of said village or township, and shall be known as the "library fund;" and when such free public library shall have been established, and a board of directors elected and qualified, as hereinafter provided, it shall be the duty of such board of directors, on or before the first Monday of September in each year, to prepare an estimate of the amount of money necessary for the support and maintenance of such library for the ensuing year, not exceeding one mill on the dollar of the taxable property of such village or township, and report such estimate to the assessor of such village, or the supervisor of such township, for assessment and collection, the same as other

village or township taxes, and the same shall be so assessed and collected; and the corporate authorities of any such villages or townships may exercise the same powers conferred upon the corporate authorities of cities under this act.

Section 4757. Any school district, by a two-thirds vote at any annual meeting, may establish a district library, and such district shall be entitled to its just proportion of books from the library of any township in which it is wholly or partly situated, to be added to the district library, and also to its equitable share of any library moneys remaining unexpended in any such township or townships at the time of the establishment of such a district library, or that shall thereafter be raised by tax in such township or townships, or that shall thereafter be apportioned to the township to the inspectors of which the annual report of its director is made.

Section 4763. The qualified voters of each township shall have power at any annual township meeting, to vote a tax for the support of libraries established in accordance with the provisions of this act, and the qualified voters of any school district, in which a district library shall be established, shall have power, at any annual meeting of such district, to vote a district tax for the support of said district library. When any tax authorized by this section shall have been voted, it shall be reported to the supervisor, levied and collected in the same manner as other township and school district taxes.

Provisions for erecting soldiers' monumental buildings.

Section 1700. *The People of the State of Michigan enact*, That whenever any township, incorporated village, or

city, or county, in which a soldiers' monumental building is proposed to be erected by any post or posts, or the department of Michigan, of the order know as the grand army of the republic, shall desire to unite with such post or department in the erection of such building for township, village or city purposes, such township, village or city shall have the right to aid and assist in the construction and building of the same to the same extent as though such (building) buildings were to be used solely for such township, village and city or county purposes, and such township, village, city or county shall have power, and they are hereby authorized to contract with any such post or department, whenever the same shall have been incorporated, and thereby determine the proportions the said township, village, city or county shall pay towards the construction of said building, the architecture and arrangement of the same, and the separate portions respectively which shall be occupied or used by the respective parties to such contract.

Section 1702. It is further provided that the township, village, city or county so uniting in the erection of any such building may raise the funds necessary for the same in the same manner and to the same extent as is now provided by law for the building of municipal buildings.

Provisions for maintaining and adorning cemeteries.

Section 2824. The council may, within the limitations in this act contained, raise and appropriate such sums as may be necessary for the purchase of cemetery grounds, and for the improvement, adornment, protection and care thereof.

Section 3132. Any city may acquire, hold and own such



cemetery or public burial place or places, either within or without the limits of the corporation, as in the opinion of the council shall be necessary for the public welfare, and suitable for the convenience of the inhabitants, and may prohibit the interment of the dead within the city, or may limit such interments therein to such cemetery or burial place as the council may prescribe; and the council may cause any bodies buried within the city in violation of any rule or ordinance made in respect to such burials to be taken up and buried elsewhere.

Section 3133. The council may, within the limitations of this act contained, raise and appropriate such sums as may be necessary for the purpose of cemetery grounds and for the improvement, adornment, protection and care thereof.

Provisions by which municipalities are made liable for damages arising from defective streets, sidewalks and bridges.

Section 3441. *The People of the State of Michigan enact*, That any person or persons sustaining bodily injury upon any of the public highways or streets in this State by reason of neglect to keep such public highways or streets, and all bridges, sidewalks, cross-walks and culverts on the same in reasonable repair, and in condition reasonably safe and fit for travel by the township, village, city or corporation whose corporate authority extends over such public highway, street, bridge, sidewalk, cross-walk or culvert, and whose duty it is to keep the same in reasonable repair, such township, village, city or corporation shall be liable to and shall pay to the person or persons so injured or disabled just damages to be recovered in an action of trespass on the case before any Court of competent jurisdiction.

Section 3442. If any horse or other animal, or any cart, carriage or vehicle, or other property, shall receive any injury or damage by reason of neglect by any township, village, city or corporation to keep in repair any public highway, street, bridge, sidewalk, cross-walk or culvert, the township, village, city or corporation whose duty it is to keep such public highway, street, bridge, sidewalk, cross-walk or culvert in repair shall be liable to and shall pay the owner thereof just damages, which may be recovered in an action of trespass on the case before any Court of common jurisdiction; Provided, That in all actions brought under this act it must be shown that such township, village or city has had reasonable time and opportunity after knowledge by or notice to such township, village or city that such highways, streets, bridges, sidewalks, cross-walk, or culvert have become unsafe, or unfit for travel to put the same in the proper condition for use, and has not used reasonable diligence therein after such knowledge or notice.

---

### APPENDIX C.

Provisions of Act No. 154, of Laws of Michigan of 1899, as amended by Act No. 174 of Laws of 1901, relating to Board of State Tax Commissioners.

Act 174, Laws of 1901, Section 145. It shall be the duty of the Governor, by and with advice and consent of the senate, within five days after this act shall have been approved by the Governor, to appoint two resident freeholders of this State, who shall be duly qualified electors thereof, and who, together with the three persons now con-

stituting the Board of State Tax Commissioners, shall hereafter constitute a Board of State Tax Commissioners, with powers and duties as prescribed under the provisions of this act, one of whom so appointed shall hold office until the thirty-first day of December, nineteen hundred four, and one of whom so appointed shall hold office until the thirty-first day of December, nineteen hundred six, and until their successors shall have been appointed and shall have qualified. Thereafter the successors of each member of said Board of State Tax Commissioners shall be appointed by the Governor, and shall hold office for the term of six years, and until their successors shall have been appointed and qualified. The persons who now constitute the Board of State Tax Commissioners under appointments heretofore made shall continue to hold their office until the expiration of their respective terms. At the expiration of the terms of office of the members of said board, their successors in office, so long as this act shall remain in force, shall be appointed by the Governor, by and with the advice and consent of the Senate. All appointments which are provided to be made by the Governor under this section of this act shall be made while the legislature is in session, and not at any other time, except in cases where a vacancy in office shall occur otherwise than by the expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the Governor shall have power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the legislature after such appointment, and no longer.

Act 154, Laws 1899, Section 146. Said board shall elect a secretary at a salary not to exceed fifteen hundred dollars per annum. The person so elected shall hold his office dur-

ing the pleasure of said board and shall keep a record of all the proceedings of said board, which records with all other papers or proceedings of said board shall be a part of the records of the Auditor General's office, and of which the Auditor General shall be the lawful custodian. The secretary shall devote all his time to the duties of his office, and when said board is not in session, shall perform such duties as may have been assigned him by said board.

Section 147. The members of said board, and the secretary thereof, shall take and subscribe the constitutional oath of office to be filed with the Secretary of State. The members of said board shall receive an annual salary of two thousand five hundred dollars, and shall devote their whole time to the discharge of the duties of their office, and they shall also receive their necessary expenses in the performance of their duties, both to be audited and allowed by the Board of State Auditors, and paid monthly by the State Treasurer, out of the general fund.

Section 148. Regular sessions of said board shall be held at the office of said board at the capital, to be furnished by the Board of State Auditors. The said board and the members thereof shall have access to all books, papers, documents, statements and accounts on file or of record of any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of the said board, and attested by the secretary thereof, directed

to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from Courts of Record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any Circuit Court in the State upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this State, and any officer or stockholder or any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State Prison for a period not exceeding two years, or by both such fine and imprisonment, in the discretion of the Court.

Section 149. Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. The chairman may call special sessions of the board whenever and wherever in the State he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

Section 150. It shall be the duty of said board:

1. To have and exercise general supervision over the supervisors and other assessing officers of this State, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this State liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value.

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the Governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the Attorney General or any prosecuting attorney in the State to assist said board.

3. To receive complaints as to property liable to taxation that has not been assessed, or has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if found to exist.

4. To see that each county in the State be visited by at least one member of the board as often as once each year, to the end that all complaints concerning the law may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

5. To require from any officer in this State, on forms prescribed by said Board of State Tax Commissioners such

annual or other reports as shall enable said Board of State Tax Commissioners to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the State under this act; the amount of taxes assessed, collected and returned delinquent, and such other matter as the board may require, to the end that it may have complete and statistical information as to the practical operation of this act.

6. To inquire into and ascertain the valuation of the properties of corporations paying specific taxes under any of the laws of this State, and to ascertain the actual rate of taxation as based upon the valuation of said properties that is being paid by said corporations, and to this end said board shall require reports from, and make investigations, as to the properties of such corporations in the same manner and to the same extent as if said corporations were paying under this act.

7. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by pulished reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the legislature, at each regular session thereof, such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

8. To further report to the legislature at each regular session thereof, or at such other times as the legislature may direct, the whole amount of taxes collected in the State for all purposes, classified as to State, county and township and municipal purposes, with the sources thereof; the amount lost; the causes of the loss; the pro-

ceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

9. To further report to the legislature at the beginning of the regular sessions, specifically, the true valuation of the properties of corporations paying specific taxes and the rate of taxation actually paid on said valuation and the true valuation of all other properties of the State, and the rate of taxation the same are paying, to the end that the legislature shall have the information necessary to re-arrange the rate or system of taxation on said properties, so that all taxable properties of the State may be taxed uniformly.

10. To be present at each meeting of the State Board of Equalization and furnish such information as said board may require, and that may assist said board in the performance of the duties imposed upon it by law.

Section 151. The Board of State Tax Commissioners shall, on or before the fifteenth day of December in each year, make an annual report to the Governor of this State, setting forth the workings of said commission during the preceding year and containing the findings and recommendations of said commission in relation to all matters of taxation. The Board of State Auditors shall cause five thousand copies of said annual report to be printed on or before the fifteenth day of January succeeding the making of said report. Three hundred copies of said report shall be placed at the disposal of the State Librarian for distribution and exchange.

Section 152. After the various assessment rolls required to be made under this act shall have been passed upon by the several boards of review, and prior to the time fixed



for equalization, and apportionment of State and county taxes, the said several assessment rolls in the State shall be subject to inspection by said Board of State Tax Commissioners or by any member thereof; and in case it shall appear, or be made to appear, to said board that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said board may issue an order directing the assessor whose assessments or failure to assess is complained against, to appear with his assessment roll at a time and place to be stated in said order, said time to be not less than seven days from the date of issuance of said order, and the place to be at the office of the board of supervisors at the county seat or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided. A notice of the time and place that said assessor is ordered to appear with said roll, together with a statement of the persons whose property or whose assessments are to be considered shall be published in a newspaper published at the county seat of said county if there be one; if not in some paper printed in said county, if there be any, at least five days before the time at which said assessor is required to appear, and where practicable personal notice by mail shall be given to said persons prior to said hearing. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear

and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by the review of said assessments thus provided for may appear and be heard at said hearing. In case said board or the member thereof who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board or member thereof acting in said review, shall place the same upon said assessment roll by proper discription, and shall place thereafter, in the proper column, the true cash value of the same. In case of review under the provisions of this section, the said board or the member thereof acting in said review shall certify under his hand officially and spread upon said roll a certificate of the day and date at which said assessment roll was reviewed by him, and the changes by him made therein. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him in the preparation of his assessment roll, to be presented to and paid by the proper officers of the municipality of which he is the assessing officer, in the manner as his other compensation is paid. The action of said board or member taken as provided in this act shall be final.

Section 153. In case it shall appear or be made to appear to said board that any assessment roll in the State is so grossly irregular and unlawfully assessed that adequate compliance with the law cannot be secured except by a general review of said assessment roll, said board may make and issuse an order that said assessment roll shall

be subject to general review, and the time and place shall be stated in said order, at which said roll shall be reviewed, and under said order the assessor whose assessment or failure to assess is complained against shall be required to appear with his assessment roll at the time and place thus determined, said time to be not less than fourteen days from the issuance of said order, and the place to be at the office of the board of supervisors at the county seat, or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided for. A notice of the time and place that said assessor is required to appear with said roll, together with a statement that said roll will be subject to general review, and that all persons interested therein may be heard at said time, shall be published in a newspaper published at the county seat of said county, if there be one; if not, in some paper printed in said county, if there be any, at least seven days before the time at which said assessor is required to appear. A copy of the order made as aforesaid shall be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there review said assessment roll and may hear and determine complaints as to the said assessment roll and the assessments of property therein, and he or they shall have power to determine in accordance with law, the amount at which said assessments shall be placed, and to change the same, so that said assessments may comply with the law. Also to place upon said roll

property omitted therefrom in the same manner as provided in the last preceding section. The determination of said board or member thereof acting in said review shall place in a column provided for that purpose, and shall proceed in all respects as provided in the last preceding section, and the supervisor or assessing officer shall receive the same compensation as provided in said section.

---

## APPENDIX D.

---

### Provisions for the Assessment of Property.

#### 1 Compiled Laws,

Section 3824. The People of the State of Michigan enact, That all property, real and personal, within the jurisdiction of this State, not expressly exempted, shall be subject to taxation.

Section 3831. For the purposes of taxation, personal property shall include:

1. All moneys;
2. All annuities and royalties;
3. All goods, chattels and effects within the State;
4. All ships, boats and vessels and their appurtenances belonging to inhabitants of this State, whether at home or abroad;
5. All goods, chattels and effects belonging to inhabitants of this State, situate without this State, except that property actually and permanently invested in business in another state shall not be included;

6. *All credits of every kind belonging to inhabitants of this State, over and above the amounts respectively owed by them whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the State.*

Section 3841. It shall be the duty of each supervisor or other assessing officer as soon as possible after entering upon the duties of his office, or as may be directed and required by the provisions of any acts of incorporation of any city or village making special provision for such assessment, to ascertain the taxable property of his assessing district, and the persons to whom it should be assessed, and their residences. For this purpose he may require every person of full age and sound mind, who the supervisor or assessor believes has property which is not exempt from taxation, to make and subscribe to a true and correct written statement under oath, administered by such supervisor or assessing officer, or other officer qualified to administer oaths under the laws of this State, of all the taxable property of such person, firm or corporation, whether owned by him or it, or held for the use of another, and it shall be the duty of every such person, firm or corporation, to make such statement under the following form of oath, duly administered by the supervisor or assessing officer

Section 3842. In taking such assessment the supervisor or assessor shall use one of the following blank forms, as may be necessary :

Property of bankers and brokers. \* \* \*

For pawnbrokers. \* \* \*

Property of Companies,—The president, secretary, or principal accounting officer of any company or associa-

tion, incorporated or unincorporated, except railroad, insurance and telegraph companies and banking corporations, the taxation of which is specifically provided for by law, shall make out and deliver to the assessor a sworn statement setting forth the following:

1. The name and location of the company, corporation or association;
2. The amount of capital stock authorized and the number of shares into which the same is divided;
3. The amount of capital actually paid in;
4. The market value of the stock, or if they have no market value then the actual value of the shares of stock;
5. *The cash value of all its personal property, giving each kind separately as far as practicable;*
6. The total of all bona fide indebtedness, except indebtedness for current expenses, excluding from such expenses all amounts paid for the purchase or betterment of said property;
7. The description and value of all real property.

The amount of the seventh item shall be deducted from the amount of the fourth item, and the balance, if any, assessed as the cash value of the personal estate. *The amount of the sixth item shall be deducted from the amount of the fifth item, and the balance, if any, assessed as personal.*

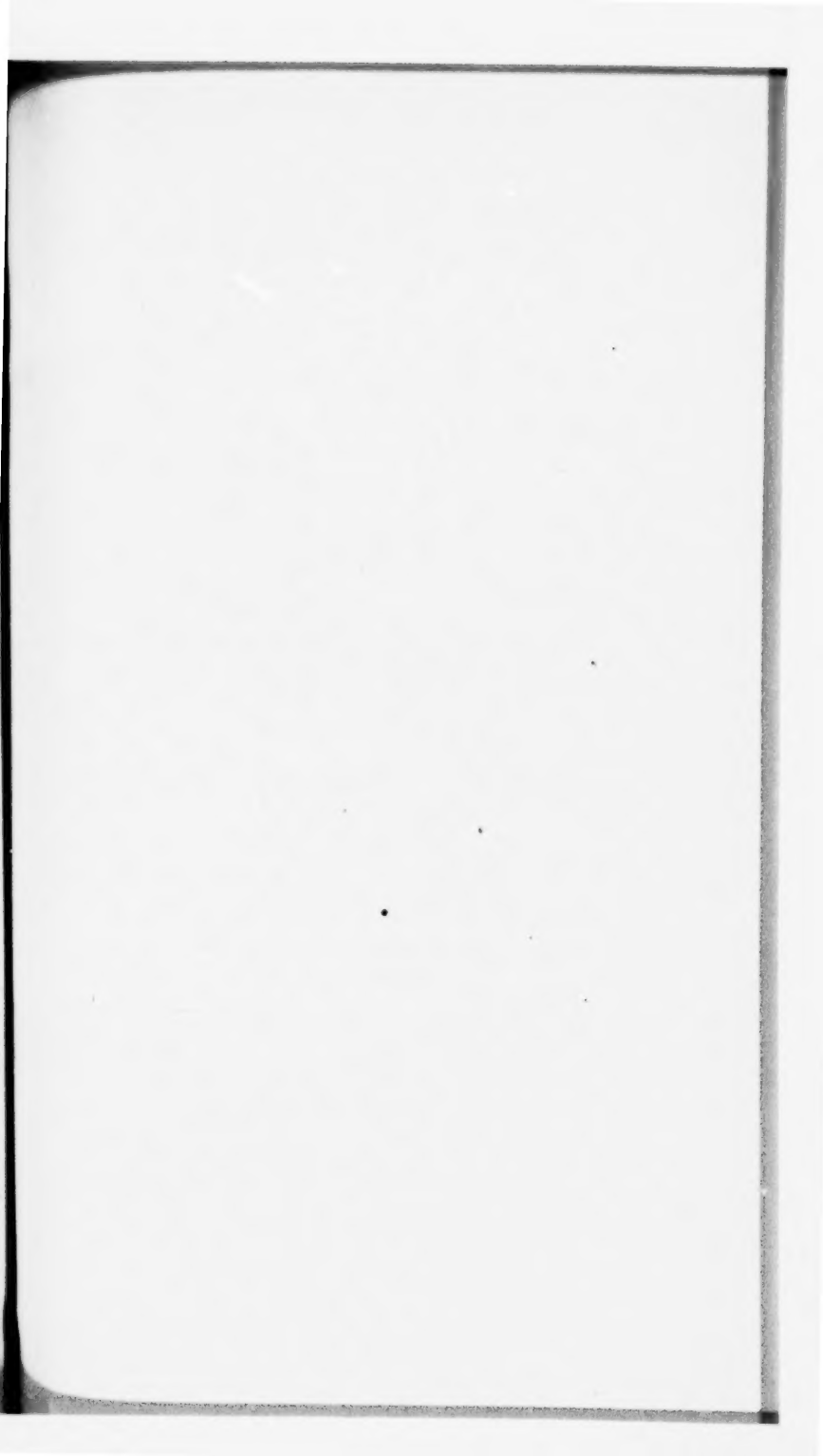
#### Personal Property—Credits

1. All annuities and royalties;
2. All credits of every kind owing to such person, whether such indebtedness is due from individuals or from corporations, public or private, or whether debtors reside within or without this State, including all deposits in banks or with other corporations, or individuals, together

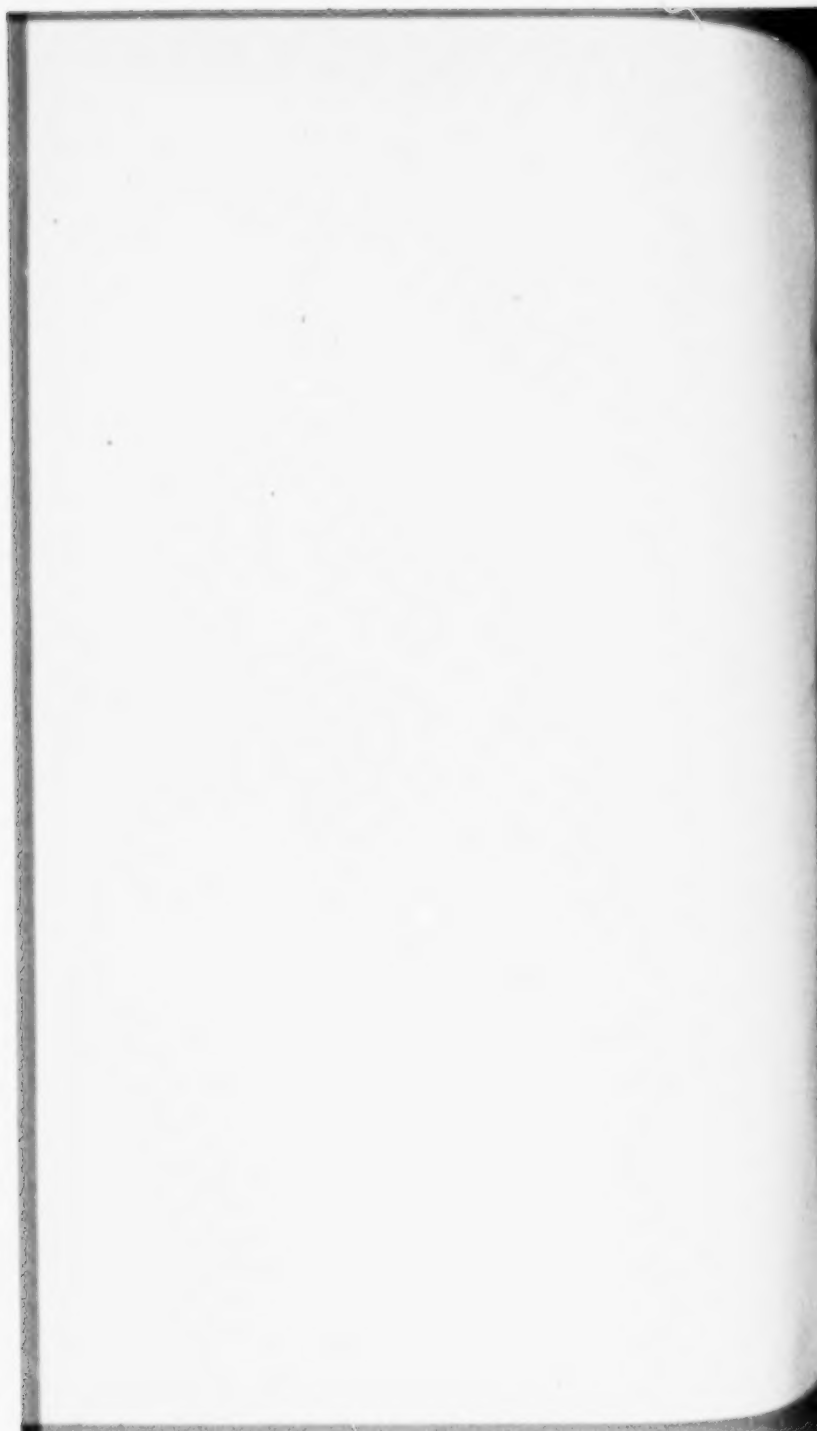
with a statement of any part thereof that is secured by real estate mortgage on lands situated in some other state;

3. All bona fide indebtedness owing by such person, giving an itemized statement in detail, how secured, and to whom owing and the residence of such creditors and the amount due each, *provided he desires to have the same deducted from his credits:*

Section 3847. On or before the third Monday of May in each year, the supervisor or assessor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed in his township or assessment district, with a full description of all the real property therein liable to be taxed. \* \* \* He shall also estimate the true cash value of all the personal property of each person and set the same down opposite the name of such person.







# Supreme Court of the United States

THE KANSAS CITY SOUTHERN RAILROAD  
COMPANY.

HENRY F. POWERS, Attorney General of  
the State of Missouri.

No. 387

## BRIEF FOR APPELLANT

LEO W. BOWERS,

Attorney for Appellant.

D. C. BUTTERFIELD,

Attorney for Appellant.

A. C. ANGELL,

HENRY RUSSELL,

ASHLEY POND,

BENTON HANCHETT,

Attorneys.



# Supreme Court of the United States.

---

**THE MICHIGAN CENTRAL RAILROAD  
COMPANY,**

*Appellant,*

v.

**PERRY F. POWERS, Auditor General of  
the State of Michigan,**

*Respondent.*

---

## BRIEF FOR APPELLANT.

---

This is an appeal from final decree of the Circuit Court of the United States for the Western District of Michigan, Southern Division, dismissing appellant's bill. Like appeals from the same court in twenty-six similar suits are before this court; which has ordered that all the appeals be heard together.

The suits were brought to restrain respondent, who is Auditor General of Michigan, from enforcing against complainants the provisions of Act No. 173 of the Michigan Laws of 1901, entitled "An Act to provide for

the assessment of the property of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes." The taxes involved in the litigation are those for 1902, resulting from the first assessment under the statute. (Sec. 17.)

The act provides for taxation of the property of the corporations to which it applies by the following method:

(a) The corporate property is to be assessed by the members of the board of state tax commissioners, who for the purposes of action under Act 173 are created a new board, known as the "State Board of Assessors." (Sections 1, 4, 5, 8, 9, 10.) The assessment is required to be at the property's "true cash value on the second Monday of April of the year in which the assessment is made." (Sec. 8.)

(b) The new and peculiar feature of the statute lies in the application to corporate property of a special rate of tax, known as the "average-rate"; which is derived by the following process: The total *ad valorem* taxes for all purposes, state, county, city, township, village and school district, paid by property in Michigan which is taxed otherwise than under Act 173, are divided by the total assessments of such property, whether made by one or another assessor, and the quotient resulting from this process of division is the rate of tax applied to corporate property under Act 173. (Sections 12 and 13.) Attention is called at

once to the fact that the property of a corporation situated in a particular part of Michigan, however restricted, is, therefore, taxed at a rate which is made to depend upon the amount of taxes paid by property in all other parts of Michigan, not merely for state but also (and largely) for local purposes.

(c) The taxes collected from corporations under Act 173 are to "be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the state debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund." (Sec. 16.)

(d) The taxes under Act 173 constitute a lien upon all the property of the taxed corporation, as well as a debt of the corporation to the state; "which lien and debt may be enforced by seizure or sale of said property, or such portion thereof as may be necessary to satisfy the same." A warrant is given by the State Board of Assessors to the Auditor General, commanding him to collect the tax; and it is provided that, "Said warrant shall authorize and command the Auditor General, in case any corporation named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, or such portion thereof as shall be necessary to raise sufficient money to satisfy such tax and the expense of such sale, after giving the same notice of such sale as provided for by the general laws of this state for the sale of property seized for taxes and offered for sale." (Sec. 13.)

A copy of Act 173 is attached to this brief as *Appendix A*.

More particular statement of its details will be made from time to time in this brief, as they may be pertinent.

Before the enactment of Act 173, the railroads of Michigan were taxed at a percentage of their gross earnings; and, if Act 173 is unconstitutional, the former statutes for gross earnings taxation remain in force. Complainants, before beginning their suits, paid to the state their full taxes under the gross earnings laws.

Act 173 of 1901 in all substantial respects is identical with a prior act—Act 168 of 1881—which required taxation of telegraph and telephone lines in Michigan upon the “average-rate” plan; and that statute was declared by the Supreme Court of Michigan to violate the requirement of the Michigan Constitution that “the legislature shall provide an uniform rule of taxation, except on property paying specific taxes.” (Michigan Const., Art. XIV, Sec. 11.)

*Pingree v. Auditor General*, 120 Mich., 95.

After that decision—in 1900—the Constitution was amended in Art. XIV, Sections 10, 11 and 13, for the purpose of permitting the taxation of corporations by the average-rate method, which the Supreme Court had declared invalid. The altered sections, in both their original and their new form, are printed in *Appendix B* to this brief; and in the same appendix are printed also Sections 12 and 14 of the same article, which were left unaltered.

In computing the average-rate for 1902—that being their first action under Act 173—the State Board of Assessors considered that the assessments upon property generally in Michigan were far below its real value, and considered farther that they were entitled to put their own valuation upon property paying *ad valorem* taxes generally. They, therefore, adjudged the true cash value of property in Michigan paying *ad valorem* taxes otherwise than under Act 173 to be \$1,715,000,000, though the actual assessments aggregated only \$1,418,251,858. Using their own valuation of general property as a divisor in computation of the average-rate, the State Board declared the rate to be \$13.68905 per thousand dollars of assessed valuation, and levied that rate on railroad property. The Board of Education of the City of Detroit, however, applied to the Supreme Court of Michigan for a writ of mandamus to require the State Board of Assessors to redetermine the average-rate, by using for such determination the aggregate of the actual assessments upon property in Michigan; and the Supreme Court awarded the mandamus, holding that under the provisions of Act 173 the State Board of Assessors had no authority to equalize in any manner the taxation of corporate property under Act 173 with the taxation of other property in Michigan paying *ad valorem* taxes, but was bound to accept for computation of the average-rate the assessments as actually made by the local assessors.

*Board of Education of Detroit v. State Board of Assessors*, 133 Mich., 116.

The validity of Act 173, however, was not at all considered by the Michigan Supreme Court; for the ob-



vious reason that both parties to the litigation claimed it to be valid—the relator asking its enforcement, and the defendants having no authority or official existence save under that act. The controversy in the case just cited was solely over the statute's interpretation.

After the decision concerning the way in which the average-rate was to be computed, the State Board made a recomputation; using this time the value of the general property in Michigan as actually assessed by the general assessors; with the result of an average-rate of \$16.55329 per thousand dollars of assessed value, which was applied to all railroad property and determined the taxes in controversy.

It is admitted that the matter in dispute in each of the cases before the court exceeds the sum of two thousand dollars, exclusive of interest and costs.

#### ASSIGNMENTS OF ERROR.

These are in all the cases practically identical with the assignment in the Michigan Central Company's case, which is found on pages 855 to 858 of the Michigan Central Record. Their essence is contained in the following selected portions, which are quoted:

"1. Act No. 173 of the public acts of Michigan of 1901, approved May 27th, 1901, deprives complainant of its property without due process of law, in contravention of article XIV of the amendments to the Constitution of the United States.

2. Act No. 173 of the public acts of Michigan of 1901, approved May 27th, 1901, denies to complainant the equal protection of the laws, in contravention of article XIV of the amendments to the Constitution of the United States.

6. Said act No. 173 of the Michigan public acts of 1901, if enforced, would take complainant's property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States, for the following several reasons, each of which is separately assigned as ground upon which the decree of the circuit court dismissing the complainant's bill should be reversed, viz.:

(a) Due process of law requires in taxation that the tax be levied by a legislative body which is chosen by and acts for the community that includes the person or contains the property taxed and receives the tax.

(b) The tax under such act is not imposed by the state legislature, but by the local legislatures of counties, towns, cities, villages and school districts in Michigan which do not represent complainant as to its property beyond the jurisdiction of such local legislatures.

(c) The moneys demanded from the complainant are not taxes at all but arbitrary and forced contributions to the state so that their exaction would be taking of private property for public use without compensation.

(d) Due process of law requires a hearing of the taxpayer upon the amount of his tax, and this right of hearing extends to the amount or rate of tax as well as to the assessment or value upon which the tax must be made.

7. Said act No. 173 of the Michigan public acts of 1901, if enforced, would deny to complainant the equal protection of the laws, in violation of the fourteenth amendment to the Constitution of the United States for the following several reasons, each of which is separately assigned as ground upon which the decree of the circuit court dismissing the complainant's bill should be reversed, viz.:

(a) While all others in Michigan are given the benefit and protection of having the amount of their taxes fixed by a representative legislature, that fundamental protection is denied complainant.

(b) Complainant's taxes are fixed in large part by

executive officers, while other taxes in Michigan have their amount determined legislatively.

(c) Other taxes in Michigan are fixed with reference to and in such amount as is deemed necessary to meet the needs of the community that pays the taxes and is to receive them, but complainant's taxes are fixed without reference to the needed revenue of the state which receives them.

(d) Complainant is denied the protection of such legislative restraint upon the consequences to it of erroneous assessments throughout the state as is afforded by Michigan legislation to all others.

(e) Complainant is denied such privilege of hearing concerning the amount of its taxes as the Michigan laws grant to all others.

(f) All taxpayers other than those of the class to which complainant belongs pay taxes founded upon the expenses of the state government and of the local governments whose benefits they enjoy and upon the private investments of the local communities to which they belong, while complainant is taxed because of the expenses of governments whose benefits it does not share and of private local investments in whose ownership and use it does not participate.

(g) Equalization of assessments is denied to complainant, while it is accorded to taxpayers of all other classes in Michigan.

(h) Debts are deducted from credits in the assessment of the property of all other classes of taxpayers in Michigan, while no such deduction is made in the assessment of the property of the complainant.

(i) Personal property of the complainant not used in its railroad business is taxed after the average-rate plan under said act, though there can be no justification for taxing it otherwise than like personal property of other taxpayers.

(j) Complainant's credits not used in or incident to its business are taxed under said act, though there can be no constitutional propriety in treating such credits under another plan of taxation than is applied to credits generally.

(k) Said act applies only to property owned by corporations and does not apply to property of the same kinds and used in the same kinds of business when owned by a natural person.

(l) The corporations enumerated in said act are arbitrarily and unreasonably separated for taxation from other corporations of essentially the same character.

(m) Complainant is denied the protection of article XIV, section 14, of the Michigan constitution which, for the benefit of all but taxpayers of the class of which complainant is one, requires that 'every law which imposes, continues or revives a tax, shall distinctly state the tax and the objects to which it is to be applied'; and further that 'it shall not be sufficient to refer to any other law to fix such tax or object.'

8. The constitution of Michigan, as amended by the change of sections 10, 11 and 13 of article XIV, made at the general election held in November, 1900, still requires uniformity in the assessment of all property subjected to *ad valorem* taxes; and act No. 173 of the Michigan public acts of 1901 contravenes the constitution of Michigan in that debts are not deducted from credits under said act, though debts are deducted from credits in the assessment for taxation of other property than that taxed under said act No. 173; and so the assessment of property for taxation under said act No. 173 is not uniform with the assessment of other property in Michigan taxed *ad valorem*. Such lack of uniformity in the assessment of property under act No. 173 and the assessment of other property violates sections 10 and 11 of article XIV of the constitution of Michigan, as amended in 1900.

9. The assessment of complainant's property under act No. 173 of the Michigan public acts of 1901, without deduction of debts from credits, while under the laws of Michigan debts were deducted from credits in the assessment of the property of others, for *ad valorem* taxation under the laws of Michigan, violates the requirement of uniform assessment of property subjected to *ad valorem* taxation made by the Michigan constitution.

10. The assessment of complainant's property under act No. 173 of the Michigan public acts of 1901, without deduction of debts from credits, violated section 12 of article XIV of the Michigan constitution requiring all assessments on property to be at its cash value.

11. The assessment of complainant's property under act No. 173 of the Michigan public acts of 1901 violated the provision of section 10 of article XIV of the Michigan constitution, as amended at the election held in November, 1900, requiring property of corporations assessed by the state board of assessors to be assessed at its true cash value.

12. The assessment of complainant's property, upon which is founded the tax involved in this suit, was made at the property's true cash value. The rate imposed upon the property of complainant by the proceedings in question in this case was the average-rate paid upon property in the state, other than that taxed under said act No. 173 of the Michigan public acts of 1901, upon which *ad valorem* taxes were assessed for state, county, school and municipal purposes. The evidence shows that such other property was uniformly, intentionally and generally assessed at the time in question at not more than eighty-two + per cent. (82 + %) of its true cash value; and seventeen + per cent. (17 + %) of the tax in question, therefore, should at its true value.

The questions to be presented to the court fall into three groups:

*First.* Under the Federal Constitution—whether Act 173 violates the provisions of the fourteenth amendment regarding due process of law or the equal protection of the laws.

*Second.* Under the State Constitution, in its amended form,—whether Act 173 violates the requirement of uniform assessment of all property taxed *ad*

*valorem* (which is claimed by appellant to remain in the constitution notwithstanding the "average-rate" amendments of 1900), by reason of the fact that deduction of debts from credits is allowed by the statutes of Michigan to all persons except those taxed under Act 173, while that act does not permit such deduction to the corporations assessed under it.

*Third.* Under both the Federal and the State Constitutions—whether, even if Act 173 be valid, the railroad taxes of 1902, involved in these suits, are invalid, because,—

(1) The assessment of railroad property was actually made without allowing any deduction of debts from credits, while such allowance was made in the assessment of all other property taxed *ad valorem* in Michigan.

(2) The assessment of railroad property was made by the State Board, designedly, at full value, while the assessments of other property in the state taxed *ad valorem* were made by the ordinary assessors, systematically and designedly, at not over eighty-two per cent. of its full value.

The last question (regarding the effect upon the taxes in suit of the systematic under-assessment of other property) is treated in a separate brief on that subject alone, as it is chiefly a question of fact and requires consideration of extensive evidence. All other questions, being those of law unmixed with fact, are considered in the brief submitted by Mr. Hanchett and in the following:

## BRIEF.

FIRST. *Under the general head that the taxing method of Act 173 of the Michigan Laws of 1901 is not "due process of law," the following contentions will be made—growing out of the central fact that the statute makes the "average-rate" depend directly upon, and grow with, the local taxes of all the counties, cities, villages, towns and school districts of Michigan, including those where the taxed railroad has no office and no property.*

I. The tax is not founded upon, and measured by, a judgment or estimate by the state legislature of the revenue needed for the state government.

II. The tax is directly founded upon, and proportionate to, the expenses (partly governmental and partly proprietary) of local communities in which the taxpayer neither resides nor has property, and whose government and local enterprises, therefore, do not benefit the taxpayer.

III. The tax is laid for relief of the citizens of the various local governments of Michigan—counties, cities, towns, villages and school districts—from part of the expenses of those local governments, under many (and indeed most) of which the taxed railroad does not live and within whose jurisdiction it has no property.

IV. The distribution of the burden of the state's needed revenue among its different contributors is not

founded upon what the legislature considers a just relation between the taxes of those persons who live or have property under the same governments, but upon what the legislature thinks a just division between persons living in different parts of the state, under different local governments, of the expenses of all those governments.

V. The amount of state tax imposed upon the railroad taxpayer is not fixed by the state legislature itself; but the power of fixing that amount is delegated to the local legislatures of the state's various political subdivisions—counties, cities, towns, villages and school districts—in many of which the taxpayer has no office or property.

VI. The taxpayer is deprived of the right to be heard concerning the amount of his tax.

Before entering upon the particular development of these several points, enough should be said to show that such faults in the statute, if they be found to exist, are forbidden by the Federal Constitution.

There are features of taxation so planted in its very nature, so essential to prevent taxation from being a mere arbitrary exaction, that they are opposed to the very idea of any government by law.

"Tax legislation may be colorable merely, either because the purpose for which the tax is demanded is not a public purpose, *or because of the absence of some other essential element in taxation.* When that is the case, the judiciary is the efficient check, and it must protect individuals and protect the public against what,



in such a case, would be an attempt at lawless exactions."

*Cooley on Taxation (3rd Ed.), 50, and cases there cited.*

"Great as is the power of any sovereignty to levy and collect taxes from its citizens, that power in a constitutional country has very distinct and positive limitations. Some of these inhere in its very nature, and exist, whether declared or not *declared, in the written constitution.*"

*Ib.*, 83.

"Taxation is limited in its exercise by its own nature, characteristics and purposes."

*In Matter of Washington St.*, 69 Pa. St., 352, 363.

"It has been forcibly and yet very truly said that an unlimited power in the legislature to make any and everything lawful *which it might see fit to call taxation*, would, when plainly stated, be an unlimited power to plunder the citizen."

*Cooley on Taxation (3rd Ed.), 183.*

Of the fundamental restrictions upon taxation, existing apart from the fourteenth amendment or other express constitutional provision, Justice Miller said:

"It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all

that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."

*Loan Association v. Topeka*, 20 Wall., 655, 662, 663.

In this case it was decided that taxes cannot be levied for a private purpose.

When elements, fundamental in the very conception of a tax, are absent, the charge is not a tax at all, but a form of confiscation.

Judson on Taxation, Secs. 340, 341, 392.

*State Board of Tax Commissioners v. Holliday*, 150 Ind., 216.

*City of Lexington v. McQuillan's Heirs*, 8 Dana (Ky.), 513, on pp. 517, 518.

*Woodbridge v. City of Detroit*, 8 Mich., 274, on page 301.

*State v. Township of Redington*, 36 N. J. Law, 66. 69, 70.

Such, indeed, is the effect of the decision in

*Loan Association v. Topeka*, 20 Wall., 655.

"Due process of law" certainly requires the preservation of all features of taxation which are necessary to its fundamental justice, or to its consistency with the nature of free institutions. An exact and full definition of the phrase has never been made, or even attempted, by the courts, but descriptions of it have been given that disclose its larger significance.

Mr. Justice Brown has said:

"This court has never attempted to define with precision the words 'due process of law,' nor is it necessary to do so in this case. It is sufficient to say that *there are certain immutable principles of justice which inhere in the very idea of free government* which no member of the Union may disregard, as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense. What shall constitute due process was perhaps as well stated by Mr. Justice Curtiss in *Murray's Lessees v. Hoboken Land Co.*, 18 How., 272, 276, as anywhere. He said: 'The constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process "due process of law," by its mere will. To what principles, then, are we to resort to ascertain whether this process, enacted by Congress, is due process? To this the answer must be twofold. We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, *we must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their*

*civil and political condition by having been acted on by them after the settlement of this country."*

*Holden v. Hardy*, 169 U. S., 366, on pages 389, 390.

Mr. Justice Matthews said:

"Due process of law in the latter (*i. e.*, the fifth amendment) refers to that law of the land which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed and interpreted according to the principles of the common law. In the fourteenth amendment, by parity of reason, it refers to that law of the land in each state, which derives its authority from the inherent and reserved powers of the state, *exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure.*

But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. *Law is something more than mere will exerted as an act of power.* It must be not a special rule for a particular person or a particular case, but, in the language of Mr. Webster, in his familiar definition, 'the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial,' so 'that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society,' and thus excluding, as not due process of law, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar special, partial and arbi-

tary exertions of power under the forms of legislation. Arbitrary power, enforcing its edicts to the injury of the person and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude."

*Hurtado v. California*, 110 U. S., 516, on pages 535, 536.

In this same case, Mr. Justice Harlan said:

"My brethren concede that *there are principles of liberty and justice, lying at the foundation of our civil and political institutions, which no state can violate consistently with that due process of law required by the fourteenth amendment in proceedings involving life, liberty or property.* Some of these principles are enumerated in the opinion of the court. But, for reasons which do not impress my mind as satisfactory, they exclude from that enumeration the exemption from prosecution by information, for a public offense involving life. By what authority is that exclusion made? *Is it justified by the settled usages and modes of procedure existing under the common and statute law of England at the emigration of our ancestors, or at the foundation of our government?*" (Page 546.)

Mr. Justice Field said:

"That clause of the fourteenth amendment is found, in almost identical language, in the several state constitutions, and is intended as additional security against the arbitrary deprivation of life and liberty and the arbitrary spoliation of property. Neither can be taken without due process of law. What constitutes that process it may be difficult to define with precision so as to cover all cases. It is, no doubt, wiser, as stated by Mr. Justice Miller in *Davidson v. New Orleans*, to arrive at its meaning 'by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded.' 96 U. S., 97, 104. It is sufficient to observe here, that by 'due process' is meant one which, following the forms of

law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights. *Hurtado v. California*, 110 U. S., 516, 536."

*Hagar v. Reclamation District*, 111 U. S., 701, on pages 707, 708.

See, also,

*Mr. Webster's argument in Dartmouth College case*, 4 Wheat., 518, 581.

*Cooley on Constitutional Limitations*, \*355.

*Johnson, J.*, in 4 Wheat., 235, 244.

*Guthrie on Fourteenth Amendment*, 66, 67 (and notes).

*Story on the Constitution (5th Ed.)*, Sec. 1945.

*Judson on Taxation*, Secs. 318, 340, 343 and 431.

The course of history and long established usage are of large importance in ascertaining what is due process.

*Murray v. Hoboken Land Co.*, 18 How., 272, 276.

*Weimer v. Bunbury*, 30 Mich., 201, 213, 214.

*Bell's Gap R. R. v. Pennsylvania*, 134 U. S., 232, 237.

In deference, then, to the principles of fundamental justice, to the history and general usages of the American people, and to the fundamental ideas of government under free institutions, can it be questioned whether "due process of law" permits unlimited taxes, without restraint by consideration of the needs of government; or whether it permits that the taxes of those who live under one government be measured by the expenses of other governments; or whether it permits persons or property to be taxed for the relief of others from the expenses of governments under which the taxpayers neither reside nor have property; or whether it permits the amount of a tax to be determined by any other legislature than that of the community to which the taxpayer belongs; or whether it permits the amount of a tax to be fixed without the taxpayer's being accorded the privilege of hearing?

That *such* things are essential to due process of law, in the field of taxation, hardly needs argument; and I shall only call attention to certain decisions of immediate pertinency.

The taking of property by a state for private use (even with compensation) is not due process of law.

*Mo. Pac. Ry. Co. v. Nebraska*, 164 U. S., 403.

Judson on Taxation, Sections 346-350.

*Id.*, Sec. 391.

The taking of property even for public use without compensation is not due process.

*C., B. & Q. R. R. Co. v. Chicago*, 166 U. S., 226, 241.

*Scott v. Toledo*, 36 Fed., 385.

Guthrie on Fourteenth Amendment, 93.

The attempt by a government to tax property beyond its jurisdiction is not due process.

*Louisville Ferry Co. v. Kentucky*, 188 U. S., 385.

*D., L. & W. R. R. Co. v. Pennsylvania*, 198 U. S., 341.

Due process requires that the taxpayer be given opportunity for hearing concerning the amount of his tax.

*Hagar v. Reclamation District*, 111 U. S., 701, 710.

*Winona & St. Peter Land Co. v. Minnesota*, 159 U. S., 526, 535.

*D., L. & W. R. R. Co. v. Pennsylvania*, 198 U. S., 341.

Undue interference with liberty of contract is not due process of law.

*Allgeyer v. Louisiana*, 165 U. S., 578, 589.

"Under the Fourteenth Amendment, the legislature is bound to provide a method for the assessment and collection of taxes that shall not be inconsistent with natural justice."

Mr. Justice Brown, in *Turpin v. Lemon*, 187 U. S., 51, on p. 60.

The Fourteenth Amendment controls the action of all branches of government,—legislative, executive and judicial.

*Blake v. McClung*, 172 U. S., 239, 260.

*C., B. & Q. R. R. Co. v. Chicago*, 166 U. S., 226, 233.



*Scott v. McNeill*, 154 U. S., 34, 45.

*Yick Wo v. Hopkins*, 118 U. S., 356, 373.

*Ex parte Virginia*, 100 U. S., 339, 346, 347.

With particular reference to the point that due process of law requires taxes to be laid by a representative legislature,—i. e., by a legislature which is chosen by the community to which the person or property taxed belongs; which acts in the interest of that community; and which is responsible to the taxpayers—these further considerations and authorities are of special value:

(1) Chief Justice Marshall said:

“The only security against the abuse of this power (i. e., taxation) is found in the structure of government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation.”

*McCulloch v. Maryland*, 4 Wheat., 427.

This language contemplates a representative legislature as fundamental in our plan of government. At another time Chief Justice Marshall said:

“The interest, wisdom and justice of the *representative* body, and its relations with its constituents, furnish the only security, when there is no express contract, against unjust and excessive taxation; as well as against unwise legislation generally.”

*Providence Bank v. Billings*, 4 Pet., 514, on page 563.

See, too,

*Wilcox v. Paddock*, 65 Mich., 23, on pages 28 and 29.

*People v. Hurlbut*, 24 Mich., 44; especially the

*language of Judge Christianity on pages 64-66, Chief Justice Campbell on page 89, and Judge Cooley on pages 97-110.*

*Board of Park Com'rs. v. Detroit*, 28 Mich., 227, on pages 244, 245, 247, 249 and 250.

*Board of Com'rs v. Abbott*, 34 Pac. Rep., 416 (Kas.).

*Schultes v. Eberly*, 82 Ala., 242—especially on page 246.

*Parks v. Board of Com'rs*, 61 Fed., 436.

*Harward v. St. Clair Drainage Co.*, 51 Ill., 130, 134-136.

*United States v. New Orleans*, 98 U. S., 381, 392.

*Thompson v. Allen County*, 115 U. S., 550, 555.

*City of Lexington v. McQuillan's Heirs*, 8 Dana (Ky.), 513, 517, 518.

This court said in *United States v. New Orleans*:

"The position that the power of taxation belongs exclusively to the legislative branch of the government no one will controvert. Under our system it is lodged nowhere else." (p. 392.)

It was said in *Parks v. Board of Commissioners*:

"Does the Constitution of the State of Kansas authorize the legislature to delegate the power of taxation either to the signers of these petitions or to these road commissioners? Can a tax be arbitrarily forced upon the taxpayers of a county, either by individuals or by officials in whose appointment they have no voice? The power of taxation is a power inherent in all governments. In a constitutional government, the people, by the constitution, confer it on the legislature. It is one of the highest attributes of sovereignty. It includes the power to destroy. It

appropriates the property and labor of the people taxed. Unrestrained power of taxation necessarily leads to tyranny and despotism. Hence, in all free governments, the power to tax must be limited to the necessities for the purposes of government, and the agencies for local taxation should be fixed and their powers limited by organic law, and they should be so selected as to be directly answerable for their official acts to their local constituencies or districts to be taxed. If they act corruptly, those directly interested may then remove them, and appoint others. If those directly interested have no voice in their appointment, or power to remove them, they have no means of correcting their abuses. No other rule can secure those to be taxed from oppression and fraud on the part of the taxing officers." (pp. 437, 438.)

In *Harward v. St. Clair Drainage Co.*, the Illinois Supreme Court said:

"The power of taxation is, of all the powers of government, the one most liable to abuse, even when exercised by the direct representatives of the people, and if committed to persons who may exercise it over others without reference to their consent, the certainty of its abuse would be simply a question of time. No persons or class of persons can be safely entrusted with irresponsible power over the property of others, and such a power is essentially despotic in its nature, and violative of all just principles of government. It matters not that, as in the present instance, it is to be professedly exercised for public uses, by expending for the public benefit the tax collected. If it be a tax, as in the present instance, to which the persons who are to pay it have never given their consent, and imposed by persons acting under no responsibility of official position, and clothed with no authority, of any kind, by those whom they propose to tax, it is, to the extent of such tax, misgovernment of the same character which our forefathers thought just cause of revolution." (p. 135.)

(2). "Representation and taxation go together."

This historic principle is the very reason for requirement of legislative imposition of a tax. The principle is that the people are to tax themselves; which they do when the taxes are voted by persons chosen as legislators by the community that pays the tax.

*Cooley on Taxation* (3rd Ed.), 95-98.

So solicitously is representative taxation insisted upon in American government that in the United States constitution revenue measures are required to be originated in the more popular branch of Congress, the House of Representatives. The same constitutional provision exists in many of the states.

The legislature cannot authorize a municipal corporation to tax lands beyond the corporate limits.

*Wells v. City of Weston*, 22 Mo., 384.

This decision is founded upon the view that, even if it were admitted that the legislature itself could levy such a tax for the benefit of the municipality, it could not delegate such power of taxation to officials of the city, inasmuch as they do not represent or act for the persons or property taxed. The court argued that the case was not within the recognized power of authorizing municipalities to tax themselves.

The admitted principle that a legislature cannot tax property beyond its jurisdiction is only another statement of the rule that property can be taxed only by the legislature of the community within which the property is situated. (*Judson on Taxation*, Chap. XIV.)

(3) The fundamental theory on which municipal corporations are allowed to be created is representative self-government. The grant by the state legis-

lature of legislative power, including that of taxation, to such bodies is a historical and recognized exception to the rule against delegation of legislative power, and is upheld only because it is strictly and entirely within the principle of representative government and, indeed, is a more immediate and complete application of that principle.

*Cooley on Taxation* (3rd Ed.), 101.

(4) It is fundamental, too, that taxation must be for the purposes of the very community that lays the tax.

*Cooley on Taxation*, Chap. V.

*Id.*, page 187.

*Judson on Taxation*, Sec. 354.

This rule rests not only on the idea that persons shall be required to pay no taxes but those whose benefit they share, but equally on the idea that the legislature of any community is empowered by the members of the community to tax only for its own purposes, and, therefore, if the legislature attempts to tax for other purposes it goes beyond its authority and the tax is one not consented to or determined by the people themselves.

It thus appears that a tax must be levied by the legislature, not only of the political body whose members or property is taxed, but also of that political body whose members receive the benefit of the tax. *The people must tax themselves for their own benefit.*

(5) The rule that taxes must be for public, and not private, purposes rests upon the same foundation

of representative legislation. The people do not tax themselves when a tax is laid by the legislature for a private purpose, because they have not authorized their legislative representatives to act on other than public matters or for other than public purposes.

(6) By article IV, section 4, of the constitution "the United States shall guarantee to every state in this union a republican form of government." While perhaps this provision does not furnish a ground of direct attack by individual taxpayers upon legislation which gives the power of taxing them to others than a representative legislature (because the constitutional guaranty runs to the state itself, and also because it is considered to be directed rather to Congress than to the courts); yet, it puts beyond question the fact that the Federal Constitution contemplates a system of representative government in the states, for republican government is representative government. Legislation by persons who are not members of the legislature that represents the community subjected to the legislation is certainly not "republican government." If, then, a tax is laid without the authority of a legislature representative of the community that pays the tax, that certainly is shown by the analogy of the section guaranteeing a republican form of government not to be due process of law; for features so fundamental in the conception of taxation as to be necessary to a republican form of government are certainly essential to due process of law.

(7) Due process of law requires, in judicial proceedings, a court having jurisdiction over the subject-matter and also over the person or property to be affected by the judgment.

*Pennoyer v. Neff*, 95 U. S., 714, 733.

A court with jurisdiction is, in the judicial field, the exact analogue of a representative body, in legislative matters. How can the legislature of any community have more power, under the Federal Constitution, over persons not within its jurisdiction than a court can?

(8) The right of appeal to the courts for relief from action of the legislature which is claimed to violate private rights is requisite to due process of law; and, therefore, a statute which forbids it is unconstitutional.

*C., M. & St. P. Ry. Co. v. Minnesota*, 134 U. S., 418, 456, 457.

Is the privilege of being legislated for by the regular, representative, legislature of one's own community less essential to due process of law?

---

.We come now to direct consideration of the statute in hand:

## I.

*These so-called taxes are not founded upon, or measured by, the state's actual need of revenue, or a legislative estimate of it. They are rather the outgrowth of a legislative declaration that a railroad must pay, to the state, as much in proportion to the value of its property as other persons throughout the state pay, on the average, for both state and local purposes (i. e., the expenses not only of the state, but of county, city, town, village and school district organizations), whether that amount of tax be what is needed by the state or not. There is no reasonable, or real, relation between the revenue which comes to the state under this statute, as a result of the amounts of tax levies made by local legislatures for local purposes, and the state's need of revenue.*

In the imposition of any tax, there are two fundamental, and ever-present, questions for the legislature to decide: (1) How much revenue the state needs, and (2) what will be a just distribution (*i. e.*, "apportionment") of that amount among the several contributors of the tax. The first of these questions is the more fundamental; because its answer fixes the amount whose division limits the second question. The revenue that the state needs is independent of its distribution among different classes of taxpayers; but that distribution concerns, and should stop with, the needed revenue. This statute, however, will be found to subordinate the question of needed revenue to the purpose of seeking equality between railroad taxes (paid to the state) and the taxes of all others than railroads



for both state and local purposes (which, therefore, are founded upon, and measured by, the *local* needs of counties, cities, towns, villages and school districts). *The statute turns the general problem of taxation upside-down*—by making the apportionment of taxation generally, as between all citizens for all purposes, control the amount of the state's revenue.

Authority is hardly essential for the proposition that the power to tax for state purposes is limited by a fair legislative discretion as to the amount of revenue needed by the state. Otherwise, the legislature can take for the state everything its citizens have,—arbitrarily.

Justice Brewer has said:

“This, as has been often observed, is a government of law, and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guarantees, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the *unnecessary* and uncompensated taking or destruction of any private property, legally acquired and legally held.”

*Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, on page 399.

It was said in *Schultes v. Eberly*, 82 Ala., 242, that:

“The legislative power conferred on the General Assembly is plenary, except as restrained by the federal and state constitutions, and by the rule that it must be legislative in character and purpose. Whoever asserts the unconstitutionality of a statute assumes the burden to show some constitutional prohibition violated, or some limitation exceeded. The prohibition or limitation need not be express; it is sufficient if such is the manifest implication from the

tenor and spirit of all the provisions relating to the subject-matter. The taxing power is legislative, and, being an incident of sovereignty, is only limited, as to the subjects and rates of taxation, in the absence of constitutional limitation, by public purposes and the needs of the government." (p. 243.)

Constitutional limitations may be implied as well as express; and their implication may result either from the essential nature of government or from the general plan of the constitution.

*Board of Comm'rs v. Abbott*, 34 Pac. Rep., 416.

*State v. Barker*, 57 L. R. A., 244, 250.

And, indeed, the Michigan Constitution distinctly says:

"The legislature shall provide for an annual tax; sufficient with other resources to pay the estimated expenses of the state government, the interest of the state debt and such deficiency as may occur in the resources."

*Mich. Constitution*, Art. XIV, Sec. 1.

It being undeniable that the legislature, in this statute of Michigan, has made the state's revenue depend upon, and vary directly with, the amounts of taxes raised, from year to year, by the several local legislatures of the various counties, cities, towns, villages, and school districts, for their local purposes, the question in hand is whether the state tax so resulting can fairly be considered to be what the state legislature itself considers the amount of revenue needed by the state in each year. The answer to that inquiry must depend upon the test whether it is a reasonable idea that the state's need of revenue is proportionate to

what the county boards, city councils, town boards, village boards, and school district boards throughout the state (over 1,000 in number) decide, in the aggregate, that they will raise in taxes for the purposes, not only of local government, but also (and largely) of local improvements and investments.

The reasonableness of creating such a relation is the test because the action of the legislature, in establishing the relation, is not conclusive upon its propriety; and legislatures, like all persons, must be taken to intend the natural (and not to seek unnatural) consequences of their acts. If, therefore, there is no reasonable, or fair, proportion between, or interdependence of, the revenue which the state needs and the revenue which the local legislatures of counties, cities, towns, villages and school districts, raise in a given year for their local governments and their local improvements, then the state legislature cannot be held to have intended that the amount of state tax depend upon, and be measured by, the state's need; but must have intended, rather, as said at the outset of this discussion, that the railroads pay taxes on a principle of supposed equalization of total tax burden between them and all other taxpayers, *whether or not the revenue so collected be adjusted to the state's need.*

The opinion in *People v. Fire Association of Philadelphia*, 92 N. Y., 311, finely illustrates the point that the legislature of Michigan, in imposing the "average-rate" of tax, cannot be supposed to have considered and determined that such tax will yield an amount of revenue proportioned to the state's need of revenue, unless it is *reasonable* to estimate the revenue which

the state needs by the revenues which the counties, cities, towns, villages and school districts of Michigan raise for their purely local purposes. In that case the court held a statute valid which imposed upon a foreign insurance company a license fee in New York equal to the license fee imposed upon New York Companies by the state incorporating the foreign company. The first thing to be noted of the case is, obviously, that the state had the right to exclude the foreign corporations wholly from business within its boundaries, and, therefore, had the right to impose such conditions as it would upon their coming into the state. (See pages 324-327.) Beyond that, however, the court held that it was a reasonable thing to seek a parity of business conditions and opportunities for New York Companies and foreign companies in the different states. The opinion recognizes fully that any law is invalid whose operation is made to depend upon a fact or condition which has no reasonable connection with the purpose of the statute. Thus, Judge Finch says:

“But it is said the doctrine thus asserted (*i. e.*, that the law of one jurisdiction may be made to depend upon the enactments of another) would permit one State to adopt the law of another State together with its future changes by one sweeping enactment; and, for an example, that New York might enact that the rate of interest here for the loan of money should be such and the same as that which should be from time to time prescribed by the law of Maine. These are seeming, but in reality false analogies. They are pure cases of an abdication of its functions by the legislature and of an unwarranted delegation of its authority. *But that is so because there is no dependent or causative connection between the domestic and the foreign law, as was said in State v. Parker (26 Vt., 365); and be-*

cause, as was explained in *Barto v. Himrod* (8 N. Y., 483), the event upon which the law is made to take effect is not one on which the expediency of the law in the judgment of the law-makers depends. *In other words, no legislative judgment is involved.*" (p. 322.)

Speaking of the same illustrative case, and differentiating it from the case in hand, Judge Finch further said:

"There is thus developed the clear and wide difference between the two laws. One has merits of its own; the other has none. The expediency of one is debatable; that of the other is not. The one is enacted *because* of the foreign law; the other only *according* to the foreign law. The one is passed for legislative reasons and out of a legislative discretion which the foreign law and its possible mutations engender; the other without any such reasons and with no reason whatever, but only through trust in a foreign reason." (p. 323.)

The reference to *State v. Parker*, 26 Vt., 365, made by Judge Finch, is as follows:

"If the operation of a law may fairly be made to depend upon a future contingency, then it makes no essential difference what is the nature of the contingency, so it be an equal and fair one, a moral and legal one, not opposed to sound policy, *and so far connected with the object of the statute as not to be a mere idle and arbitrary one.*" (Page 320 of Judge Finch's opinion.)

Here, then, is the question: Is the connection, which Act 173 establishes, between the amount of the state's revenue and the amounts of taxes raised by the local legislatures of the counties, cities, towns, villages and school districts in Michigan, for their local purposes, more than "an idle and arbitrary one?" *Is there a reasonable connection between them?*

The right and duty of this court to consider the real tendency of the taxing process prescribed by the statute in hand, with reference to the question whether it establishes a reasonable connection between state tax and the state's need of revenue, is amply sustained by cases already decided; and some of them are cited here. The same duty of judicial pronouncement of the real character and operation of a statute (whatever name it may bear, or superficial character it may wear) will be appealed to frequently in other branches of this brief.

"While good faith and a knowledge of existing conditions on the part of a legislature is to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminating legislation is to make the protecting clauses of the fourteenth amendment a mere rope of sand, in no manner restraining state action."

Brewer, J., in

*G. C. & S. F. Ry. v. Ellis*, 165 U. S., 150, on page 154.

"That, however, does not preclude this court from putting upon the ordinances of the supervisors of the County and City of San Francisco an independent construction; for the determination of the question whether the proceedings under these ordinances and in enforcement of them are in conflict with the Constitution and laws of the United States, necessarily involves the meaning of the ordinances, which, for that purpose, we are required to ascertain and adjudge.

We are consequently constrained, at the outset, to differ from the Supreme Court of California upon the real meaning of the ordinances in question. That court considered these ordinances as vesting in the

board of supervisors a not unusual discretion in granting or withholding their assent to the use of wooden buildings as laundries, to be exercised in reference to the circumstances of each case, with a view to the protection of the public against the dangers of fire. We are not able to concur in that interpretation of the power conferred upon the supervisors. There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. *They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons.* So that, if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of *mandamus*, to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint."

Matthews, J., in

*Yick Wo v. Hopkins*, 118 U. S., 356, on page 366.

See, also, the language of this admirable judge on pages 371 and 373 in the same case.

"The legislature of a state must be presumed to have acted from lawful motives, *unless the contrary appears upon the face of the statute.*"

Justice Gray in dissenting opinion in

*G., C. & S. F. Ry. v. Ellis*, 165 U. S., 150, on page 167.

The regulation of railroad rates is within the legislative discretion, just as fully as taxation; but that discretion must be reasonably exercised, just as in the case of taxation. The rule is that the determination of the legislature must be presumed to be just and must be upheld unless it clearly appears to the contrary.

*Cotting v. Kansas City Stock Yards Co.*, 183 U. S., 79, 91.

The federal courts are not bound, in considering questions under the Fourteenth Amendment even to accept the views concerning the nature or effect of a state statute that may have been taken by the state courts.

*Yick Wo v. Hopkins*, 118 U. S., 356, 366.  
*A., T. & S. F. R. R. v. Matthews*, 174 U. S., 96, 100.

In illustration of the judicial power to pass upon questions concerning the real nature and operation of tax statutes, it is settled that courts may consider independently whether the purpose of the so-called tax is really public, even if the legislature has declared it in terms to be public; whether property sought to be taxed is really within the legislature's jurisdiction, even if the legislature has pronounced it to be; whether a tax is really uniform (when the state constitution requires it to be uniform), even though the legislature by adopting it has given it presumptive propriety; and whether a thing called by the legislature a "tax" is really a tax at all, or rather a taking of private property for public purposes without compensation.



Said Mr. Justice Brown, in *Holden v. Hardy*:

"These employments (*i. e.*, underground mining), when too long pursued, the legislature has judged to be detrimental to the health of the employes, and *so long as there are reasonable grounds for believing that this is so* its decision upon this subject cannot be reviewed by the federal courts." (169 U. S., 366, on page 395.)

It was further said in the same case:

"The question in each case is whether the legislature has adopted the statute in the exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class." (*Id.*, p. 398.)

Justice Harlan, in *L. S. & M. S. Ry. Co. v. Ohio*, 173 U. S., 285, used (with reference to the question whether statutes are valid exercise of the police power, which is nothing else than the legislative power) the phrase, "*Having a real, substantial relation to the public ends intended to be accomplished thereby.*" (page 299.) See, also, his language on pages 300 and 301 in the same case.

And, beside other valuable language, this court said through Mr. Justice Peckham, in *L. S. & M. S. Ry. Co. v. Smith*, 173 U. S., 684, of the Michigan statute requiring family thousand mile tickets:

"It is not legislation for the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the persons spoken of, who in the legislative judgment should be carried at a less expense than the other members of the community. *There is no reasonable ground upon which the legislation can be rested unless the simple decision of the legislature should be held to constitute such reason.*" (page 699.)

See, also, pages 691, 693, 694 and 699.

See, also,

*R. R. Co. v. Husen*, 95 U. S., 465, 473.

*Dobbins v. Los Angeles*, 26 Sup. Ct. Rep., part No. 1, 18, on page 20; and the cases there cited.

By the pertinent test, viz.: whether the state's need of revenue can *reasonably* be judged by, and the state's revenue made to depend upon, the action of all the local legislatures in the state, in raising local taxes for local purposes of government and improvement, the statute in hand must fall;—

1. The Michigan Supreme Court itself decided, concerning the statute known as the "Atkinson Law" (which was identical in its plan with Act 173, and the overthrow of which by the state court led to the amendment of the Michigan Constitution) that just such an average-rate tax as here involved does not "bear a proportion to the amount to be raised" for the state. The court said:

"We must infer that this is a state tax, for it is payable to the state treasurer, and the law does not provide for its application to local purposes. *The taxes generally assessed for the state bear a proportion to the amount to be raised*, and all taxable property, except that paying specific taxes, is charged with a given and equal per centum upon its assessed value. That cannot be said of this property, for the rate is to be the average of all taxes raised for all purposes,—local as well as state."

*Pingree v. Auditor General*, 120 Mich., 95, on page 102.

2. Instead of its being true that, the more taxes the counties, cities, villages, towns and school dis-

tricts raise and spend for purposes of government, the more revenue the state needs to have, the exact reverse seems true. To the extent that the local communities in the state do the work of government, the state does not have it to do; and its own need of revenue should, therefore, be less.

3. The local taxes, however, in proportion to which complainants are taxed are not merely for governmental purposes, but are *largely for purposes that may be described as proprietary*.

Local taxes of the latter kind are such as are raised for purposes like the establishment or maintenance of parks; the establishment or maintenance of public baths; the establishment or maintenance of municipal gas works; the establishment or maintenance of municipal water works; the establishment or maintenance of municipal fire departments; and other like purposes. Decided cases, in the greatest abundance, establish that municipal operations of such kinds are not governmental, but purely private and proprietary. The completeness and fundamental character of the difference between taxes for such purposes and taxes for truly governmental purposes may be illustrated by three of its important consequences.

(a) The state legislature cannot impose taxes upon municipal corporations for their private purposes, though it may taxes for their governmental purposes.

*Board of Park Com'rs. v. Detroit*, 28 Mich., 228, 236, 237, 241, 242.

*Davock v. Moore*, 105 Mich., 120.

*Cook Farm Co. v. Detroit*, 124 Mich., 426.

*Biades v. Board of Water Com'rs.*, 122 Mich., 366, 389.

- Hasbrook v. Milwaukee*, 13 Wis., 37.  
*Mills v. Charlton*, 29 Wis., 413.  
*People v. Mayor*, 51 Ill., 17.  
*Gage v. Graham*, 57 Ill., 144.  
*Wider v. East St. Louis*, 55 Ill., 133.  
*State of Wisconsin v. Haben*, 22 Wis., 660.  
 2 *Smith on Municipal Corporations*, Sec. 1476,  
 p. 1531.  
*Cooley's Constitutional Limitations*, pp. 284,  
 285 (using identical language with the  
 last preceding work).

(b) Municipalities may bind themselves by contract with private companies authorizing the latter to do exclusively for the municipalities, and even exclusively of the municipality, such work as meets only the private, as distinguished from the governmental, needs of the community.

- Illinois Trust & Savings Bank v. Arkansas City*, 76 Fed., 271, 282.  
*New Orleans Gas Light Co. v. New Orleans*,  
 42 La. Ann., 188.  
*Walla Walla v. Walla Walla Water Co.*, 172  
 U. S., 1.  
*City R. Co. v. Citizens R. Co.*, 166 U. S., 557.  
*New Orleans Water Works v. New Orleans*,  
 120 U. S., 64.  
*New Orleans Water Works v. Rivers*, 115  
 U. S., 674.  
*Little Falls E. & W. Co. v. Little Falls*, 102  
 Fed., 663.  
*Cunningham v. Cleveland*, 98 Fed., 657.  
*Los Angeles Water Co. v. City*, 88 Fed., 720.  
*Bartholomew v. Austin*, 85 Fed., 359.

*Ludington Water Supply Co. v. Ludington*,  
119 Mich., 480.

*Adrian Water Works v. Adrian*, 64 Mich.,  
584.

*Atlantic Water Works v. Atlantic City*, 39  
N. J. E., 367.

*Newport v. Newport Light Co.*, 84 Ky., 166.

*State v. Orr*, 68 Conn., 101.

*Indianapolis v. Gas Light Co.*, 66 Ind., 396.

*Water Works Co. v. Atlantic City* (N. J.),  
6 Atl. Rep., 24.

(c) The state cannot appropriate to itself, without compensation, the property obtained by a municipality with taxes raised and used for its non-governmental purposes—even upon dissolution of the municipality.

*Board of Park Com'rs v. Detroit*, 28 Mich.,  
228, 240, 241.

*State of Wisconsin v. Haben*, 22 Wis., 660.

*State ex rel. White v. Barker*, 57 L. R. A.,  
244, 250, 251.

*Meriwether v. Garrett*, 102 U. S., 472.

*Dubuque v. Ill. Cent. R. Co.*, 39 Iowa., 56,  
63-68.

*Grogan v. San Francisco*, 18 Cal., 590.

*Spaulding v. Andover*, 54 N. H., 38.

*Town of Milwaukee v. City of Milwaukee*, 12  
Wis., 93.

The Michigan law, on this point, is fully stated by Judge Cooley:

“Municipal corporations, considered as communities endowed with peculiar functions for the benefit

of their own citizens, have always been recognized as possessing powers and capacities, and as being entitled to exemptions, distinct from those which they possess or can claim as conveniences in state government. If the authorities are examined, it will be found that these powers and capacities, and the interests which are acquired under them, are usually spoken of as *private*, in contradiction to those in which the state is concerned, and which are called *public*; thus putting these corporations, as regards all such powers, capacities and interests, substantially on the footing of private corporations. This distinction is very carefully drawn in *Bailey v. New York*, 3 Hill, 531, which concerned the New York Water Works, and also in *Small v. Danville*, 51 Me., 362; *Philadelphia v. Fox*, 64 Penn. St., 180; and *Western College v. Cleveland*, 12 Ohio, N. S., 375. It is well stated by Lewis, Ch. J., in *Western Saving Fund Society v. Philadelphia*, 31 Penn. St., 183, in speaking of a municipal corporation as the owner of gas works: 'The supply of gas light,' he says, 'is no more a duty of sovereignty than the supply of water. Both these objects may be accomplished through the agency of individuals, or private corporations, and in very many instances they are accomplished by these means. If this power is granted to a borough or a city, it is a *special private franchise*, made as well for the *private* emolument and advantage of the city as for the public good. *The whole investment is the private property of the city; as much so as the lands and houses belonging to it.* Blending the two powers in one grant does not destroy the clear and well settled distinction, and the process of separation is not rendered impossible by the confusion. In separating them, regard must be had to the object of the legislature in conferring them. If granted for public purposes exclusively, they belong to the corporate body in its public, political or municipal character. But if the grant was for purposes of private advantage and emolument, though the public may derive a common benefit therefrom, the corporation *quoad hoc* is to be regarded as a pri-

vate company. It stands on the same footing as would any individual or body of persons upon whom the like special franchises had been conferred."

*Board of Park Commissioners v. Common Council of Detroit*, 28 Mich., 228, on pages 238, 239.

And, again:

"In the *People v. The Common Council of Detroit*, 28 Mich., 228, the nature of the ownership which municipal corporations have in their parks and commons was considered, and was declared to be, analogous to the ownership of private persons."

*Attorney General v. Burrell*, 31 Mich., 34.

The same view is stated in numerous decisions of the Michigan Supreme Court:

*Mayor v. Park Commissioners*, 44 Mich., 602, 604.

*Adrian Water Works v. Adrian*, 64 Mich., 584.

*Davock v. Moore*, 105 Mich., 120.

*Blades v. Board of Water Commissioners*, 122 Mich., 366.

*Cook Farm Co. v. Detroit*, 124 Mich., 426.

How can it be said that the state's need of revenue is proportionate to the *private investments* of the various local communities in the state? *As well might the legislature say that complainant's tax should be determined by inclusion in the average-rate process of all amounts spent by strictly private gas companies, water companies, street railway companies, etc., for their plants in the state.* Let it be remembered that the municipal gas plants, water plants, street railway

plants, etc., are not treated by this statute of Michigan as property to be taxed; but their cost (as met by taxes) is taken as showing a proportionate increase in the amount of revenue needed by the state. The like investments of purely private companies might better than municipal investments of a private kind be made to measure the state's proper revenue, because they may be new property in the state (brought there from other states for the investment) while taxes for municipal investments cannot be inferred to represent an increase of property in the state, being imposed upon persons and already-existing property within the state.

4. The tax levies of the various local communities are, in their true nature, expressions of the *opinions* of the local legislators *as to what local governmental needs and local policies of convenience and improvement make it wise to spend*. In that character they agree with most, if not all, exercises of legislative power, which are the outcome and declaration of the legislature's opinion of public policy. And, in deciding what amount of local taxes shall be raised, the local legislators consider local conditions and local policies solely; they do not, and cannot, look beyond. For illustration, in determining whether to establish a city fire department or health department, the city council passes upon a pure question of policy, and its decision is the legislative judgment on the question of policy. So, too (in the field of its proprietary operations), when a city council decides to establish water works, or gas works, or a public library, or a city park, it passes on, and its decision expresses, its opinion upon the question whether that is a wise policy



for the inhabitants of the city. It is not determining a fact, but fixing a policy. *How can the collective action of the numerous local legislatures, in determining local policies—partly governmental, but also largely private and proprietary—and fixing local taxes in aid of those policies, be said to afford any reasonable test, or measure, of the revenue which the state needs for its own purposes,—when that action is expressive only of the judgment of those local legislatures upon what it is wise or profitable for their respective communities to do, in the two very different fields of local government (in the strict sense) and of local enterprise which is private to the local community and proprietary in its nature?*

The *difference* between the statute of Michigan, under consideration, and ordinary taxation, lies (as respects the point immediately in hand), in three features:

(1) Tax statutes generally afford no indication of the basis on which the legislature determines the amount of the tax. They simply indicate a given rate or a given amount; and there is no way of telling how the legislature made up its mind. The presumption, therefore, obtains that the legislature judged in a proper way and upon reasonable grounds; and there is nothing to rebut that presumption. *Act 173, however, does affirmatively show just the basis on which the legislature has acted; viz., the measurement of state taxes by the decisions of the legislatures of the various counties, cities, towns, villages and school districts throughout the state concerning their own local needs for local government and local enterprise.*

(2) If the legislature orders a stated amount of tax

to be raised, it plainly says what revenue it considers the state to need. If, on the other hand, the legislature names the tax rate, that rate is applied to the prescribed subject of taxation (whether property, income, occupation or other thing), and the legislature again must be deemed to have decided that the stated rate, so applied to the subject of the tax, will yield no more than the state needs. *In such case,—the rate being definitely fixed by the legislature—the only thing that has to be judged, in order to estimate the amount of revenue, is the quantity or extent of the subject of the tax (property, income, occupation, etc.); and that is a question of fact which the legislature can estimate as well as anybody, and has to estimate.* But, under this Michigan statute, an estimation of the quantity of property (viz., railroad property-value), which is the subject of the tax, will tell nothing of the amount of revenue that will result. The rate has first to be known; and that the legislature has not made definite. On the contrary,—

(3) The legislature cannot have estimated the rate of tax, in the usual and necessary way in which it estimates what amount of revenue will result from a tax rate which it names; because the latter problem requires only a judgment, as already said, upon the probable amount or extent of taxable property, income, occupation, etc.; which is always a question of fact,—future, rather than present fact, it is true—but still a question of fact, which can be reliably estimated, and is regularly estimated by all sorts of persons for all sorts of different purposes. The estimation of the average-rate, however, for any year, under this Michigan law, is not a question concerning what

the ordinary *facts* of community or business life will be and of the amount of revenue that will result from those facts through application of a stated and definite rate of tax; *but is a question of what other legislatures will do, in their independent discretionary power to adopt policies, partly governmental and partly proprietary, for their various jurisdictions.* And it should be recalled in this connection that those decisions of policy by other legislatures are not themselves concerning, or determined by, an estimate or consideration of facts merely, but are *decisions concerning questions of expediency*, about which on given facts different views might well be adopted. How can the state legislature reasonably be considered able to foretell such things? Nobody else can; and legislators are men.

*What sound reason can be advanced why the state tax of Michigan could not as well be measured by, and made to depend on, the local taxes in the various counties, cities, towns, villages and school districts of Ohio, as upon the local taxes in the various local communities of Michigan itself?* The local legislatures of the counties, cities, towns, villages and school districts of Michigan are as independent, in their legislative action, of the state legislature, as are the local legislatures in Ohio; their legislative decisions are upon questions of local policy as distinct from the state policy of Michigan, as are the enactments of Ohio's local legislatures; and, especially, their levies of local taxes for domestic enterprises such as water works, gas works, libraries, baths, parks, street railways, etc.—being (under the decisions of the Michigan Supreme Court itself) purely private enterprises—are unmis-

takably as unrelated to the question of what Michigan's state revenue should be as are the local taxes for like municipal enterprises, of a private character, in Ohio.

## II.

The tax under this Michigan statute is *founded in large part upon the governmental expenses and proprietary outlays of local communities whose benefits the tax-paying railroad company does not share*; and so violates that most fundamental rule that the right of the state to tax rests upon the benefits which the state confers.

No one of appellant railroads is situated in all the counties of Michigan. Most of them are situated in a small part of the state. The Chicago & North-Western Railway Company, for example, has no railroad, or office, in Michigan outside of the "Upper Peninsula," and yet the average-rate of tax applied to its property depends upon, and increases with, the taxes raised in all the counties of the "Lower Peninsula" of Michigan, and in all the cities, towns, villages and school districts of those counties, for purely local purposes. If Detroit spends \$10,000,000 for local government, the North-Western Railway Company has to pay proportionately more tax on its property in Northern Michigan than if Detroit's tax for local government were \$5,000,000; and, beyond that, if Detroit spends \$1,000,000 or \$5,000,000 for purely domestic or private enterprises, such as gas works, water works, street railways, parks, baths, libraries, etc., the North-Western Railway's tax on its property

(though wholly outside of Detroit—in the “Upper Peninsula”) is proportionately larger on that account.

It is unimportant, in this case, whether a railroad may be taxed more, as a whole, because of the expenses of local governments and of local enterprises in the counties, cities, villages and school districts where *some part* of the railroad is situated. The statute of Michigan does not stop with that. The average-rate of tax applied to the North-Western Railway is not derived by averaging all taxes (state and local) in the counties, cities, towns, villages and school districts, which the railroad enters; but by averaging all state and local taxes throughout the state. It may well be that (as respects the immediate point) the unity of railroad property would justify a statute requiring a railroad to pay taxes to the state at a rate derived by averaging the taxes, state and local, paid by others *in the same taxing jurisdiction*; but the question before the court is whether it can be made to pay a tax directly dependent upon, and measured by, the local taxes of counties, cities, towns, villages and school districts *where it has no part of its property and no office*. Such a plan operates to tax the railroad because of the expenses (public and private) of local communities whose benefits it does not enjoy.

1. The rule that taxes must be founded upon the expenses of a government whose benefits the taxpayer shares is plain, both in principle and on authority.

*Sleight v. People*, 74 Ill., 47, 49.

*Allhands v. People*, 82 Ill., 234.

*Drake v. Ogden*, 128 Ill., 603, 611, 612.

*Town of Belle Point v. Pence*, 17 S. W. Rep.,  
(Ky.), 197.

*County Com'rs Talbot County v. County  
Com'rs Queen Anne's County*, 50 Md., 245,  
259, 260.

*Wells v. City of Weston*, 20 Mo., 387, 391.

*In re Lands in Town of Flatbush*, 60 N. Y.,  
398, 406, 407.

*Platt v. Milton*, 58 Vt., 608.

*Simon v. Northrup*, 27 Oregon, 487, 503, 504.

*Berlin Mills v. Wentworth's Location*, 60  
N. H., 156.

*In re Madera Irrigation District*, 92 Cal., 296,  
304.

*Farris v. Vanmer*, 6 Dak., 186.

2. This rule requires more than that the tax be laid by, and paid into the treasury of, a government from which the taxpayer benefits. *It demands that one taxpayer be not charged more than others of the expenses of a government which they both enjoy, because of and in proportion to the taxes which those others pay for the support of other governments from which the first named taxpayer does not benefit.* Otherwise, the rule comes to nothing; for it is quite immaterial whether the taxpayer (in the case just supposed) is made to pay taxes *directly* for the support of the other governments under which he does not live or hold property, or is made to pay to the government under which he does live or hold property more tax than others under that government are required to pay, because of and in proportion to the taxes which such others pay to the governments whose benefits the first taxpayer does not share. Concretely, what dif-

ference in substance and effect does it make, either to the North-Western Railway Company or to the residents of Detroit, whether the North-Western Railway Company is taxed *directly* by or for Detroit, on account of the expenses of its local government and local investment-enterprises—with the result thereby of relieving the inhabitants of Detroit from a part of those expenses—or the North-Western Railway Company is taxed more by and for the state, on account of the expenses of Detroit's local government and local investment-enterprises,—with the result of relieving the inhabitants of Detroit from a part of the state's expenses? The inhabitants of Detroit ought to be as well pleased with one plan as the other, for under either they get the benefit of increased taxation put upon the North-Western Railway Company's property in the northern part of Michigan, *in consequence of Detroit's local expenses*. It can make no difference to Detroit residents whether the North-Western Railway Company, in consequence of Detroit's expenses, is required to pay \$1,000 tax toward meeting those expenses directly, or is required to pay \$1,000 to the state, in order that they may be relieved from the necessity of paying that sum to the state. In either case, the North-Western Railway Company helps the citizens of Detroit out, because they have local expenses (partly public and partly private) from which the North-Western Railway Company gets no advantage. And the *reason* why the North-Western Railway Company has to pay an increased tax is that the statute charges it not only because of the expenses of the state, but also because of the expenses of Detroit (as well as of counties, cities, towns, villages and school districts generally).

*This Michigan statute itself recognizes, and is founded upon, the very plain principle just applied in argument, viz., that it makes no difference how the aggregate tax burden is divided for different taxpayers between state tax, on the one hand, and local taxes, on the other hand; for the rule of this statute is that one taxpayer may justly be relieved of local taxes, if he pays proportionately more state tax, while another taxpayer is required to pay local taxes because proportionately relieved from state tax. That is a central idea of the enactment under consideration. If it were given operation, to the end only of equalizing aggregate taxes of different taxpayers in the same taxing jurisdictions (i. e., under the same governments), the argument now being made would not be applicable; but the trouble is that the principle of equalizing aggregate tax burdens is applied between taxpayers of different jurisdictions,—living and having their property under different governments—with the result of really taxing the railroads (on account of their relief from local taxes in places where their property is situated) more for the state, in proportion to the local taxes in places where their property is not situated, and so making them really share the burden of local taxes in whose benefit they do not participate. And, both in the substance of things and on the principle of this statute itself (which regards aggregate taxation, state and local, as the important thing, and the division of that aggregate between state and local taxes as unimportant), it cannot make any difference whether a railroad pays more tax in direct or in indirect relief of others from the expenses of local governments whose benefits that railroad does not share.*



Judge Cooley said:

"In considering the legality of the purpose of any particular tax, a question of first importance must always concern the grade of the government which assumes to levy it. The 'public' that is concerned in a legal sense in any matter of government is the public the particular government has been provided for; and the 'public purpose' for which that government may tax is one which concerns its own people, and not some other people having a government of its own, for whose wants taxes are laid. There may, therefore, be a public purpose as regards the federal Union, which would not be such as a basis for state taxation, and there may be a public purpose which would uphold state taxation, but not the taxation which its municipalities would be at liberty to vote and collect. The purpose must in every instance pertain to the sovereignty with which the tax originates; it must be something within its jurisdiction so as to justify its making provision for it. The rule is applicable to all the subordinate municipalities; they are clothed with powers to accomplish certain objects, and for those objects they may tax, but not for others, however interesting or important, which are the proper concern of any other government or jurisdiction. State expenses are not to be provided for by federal taxation, nor federal expenses by state taxation, because in neither case would the taxation be levied by the government upon whose public the burden of the expenses properly rests. To provide for such expenses would consequently not be a purpose in which the people taxed would in a legal sense be concerned."

1 Cooley on Taxation (3d Ed.), 187-8.

See, also:

*Town of Belle Point v. Pence*, 17 S. W. Rep. (Ky.), 197.

*Howell v. Bristol*, 71 Ky. (8 Bush), 493, 499.

*County Com'rs of Prince George's County v. Com'rs of Laurel*, 70 Md., 443, 447.

*Ryerson v. Utley*, 16 Mich., 269, 276.

*State v. Leffingwell*, 34 Mo., 458, 473.

3. It hardly needs argument to show that a railroad is not benefited by the expenses (public or proprietary) of the counties, cities, towns, villages and school districts, where it has no property or office. Four considerations, however, will readily show this:

(a) The legislative establishment of the boundaries of any political subdivision of the state determines not only the range of action of its local government, but equally the reach of that government's benefits. If the municipal boundaries be not the line of division between those who are and those who are not benefited, as well as governed, there is no line at all.

(b) A local legislature—of a county, city, village, town or school district—considers (and should consider) in determining its action only the interests of its own constituency. It is not for the Detroit city council to regard the rest of the state, or any part of it beyond the city boundaries, in deciding whether to create a fire department or to establish a park or a library. That question should be decided in obedience to the city's advantage. And the persons and property whose advantage the local legislature does not heed cannot be regarded as sharing legally the benefits of their action. Doubtless, the real reason why anybody is held to be benefited by the action of a government is that that person is one whose interests the government is entitled, and required, to consider; and for whom, therefore, that government must be held to have decided that he will be benefited by its action. Nobody, then, outside the jurisdiction of a local leg-

islature can be held benefited by its action. The question of his benefit that legislature had no right to decide.

(c) If railroad property everywhere in the state can be deemed to share the benefits of each local government in the state, that result must be also true of all the thousand different kinds of property throughout the state. How can it be said that a railroad in the Upper Peninsula of Michigan shares the advantages of Detroit's local government, and that no other property in the Upper Peninsula participates in those advantages? In a wide and indirect way it is doubtless true that all persons and property in Michigan are better circumstanced because of the work of government in each local community; but similar (and undoubtedly as large) benefit comes to them from the governmental operations of the neighboring states, and the local communities of those states. Such benefit is merely indirect and incidental,—not immediate, and not of the kind that the law can consider and make the basis of taxation.

The statute in hand does not charge more tax upon anybody or anything, but a few corporate properties, beyond the limits of a given county, city, town, village or school district, because of any expenses of that county, city, town, village or school district; and it, therefore, negatives the idea that any persons or property can be said to share the benefit of local governments under which they do not exist. Railroads cannot be distinguished, in that respect, from *all* other kinds of property.

(d) Finally, no doubt can exist as to the purely lo-

cal benefit from municipal expenditures which are of an economic, rather than a strictly governmental, character; such as for gas works, water works, parks, libraries, baths, street railways, etc. As already seen, those municipal enterprises, both under the authorities generally and by the settled law of Michigan itself, are strictly private. They are the private property of the inhabitants of the municipality which establishes them. Nobody outside the municipality shares that property. It is impossible to say that persons and property beyond the municipality that creates and owns them can properly be made to help pay for them. And yet, this statute of Michigan makes no distinction, in determining the "average-rate" of tax to be paid by railroads, between local taxes for local government and local taxes for local investments. It, therefore, in a most important feature, charges railroads for the cost of creating, and of maintaining, local improvements in which they have no share. What could be a more fundamental fault in the law? It is not too much to say that in the near future—if not already—the expenditures of cities and towns for such local enterprises as gas works, water works, libraries, baths, street railways, parks, etc., will exceed their outlay for the ordinary operations of local government. And the "average-rate" plan of taxation, as exemplified by this act of Michigan, proposes to make railroads (and railroads alone) help pay for such municipal enterprises even *in all places where no part of the railroad is situated*. Can it be that Detroit can spend \$10,000,000 or \$20,000,000 for a street railway or a library or a park, and (by the operation of such a law as that under dis-

cussion) be consequently relieved by the railroads elsewhere in Michigan from a part of the amount of state tax that, if Detroit does not establish the street railway or library or park, its inhabitants will have to pay? Their relief in that way and on that account is undeniable; for it is only common sense that if the railroads are required to pay more state tax than the law puts upon them in case Detroit does not spend money for local improvements, then a smaller amount of state tax is needed, and will be raised, from other persons and property, both within and without Detroit.

### III.

The rule that *taxes cannot be laid by or for communities whose benefits the taxpayer does not share* has the closest connection with the point just considered,—that taxes must not be founded upon, and proportionate to, the expenses of such communities (which are really foreign to the taxpayer); and already it has been shown that *the necessary result of the measurement of appellants' state tax by the local taxes of the local communities throughout the state (in the larger part of which appellants have no property) is to tax a railroad, actually, for the relief of the inhabitants of all those local communities (including those where the railroad has no property) from a part of the burden of their local governments and their local municipal enterprises.* I desire now to add, first, a few utterances of authority; and, next, the point that *such contribution by a railroad toward the relief of local communities whose benefits the railroad does not share*

must be deemed a central and conscious purpose of the statutory plan.

1. The rule,—that persons and property cannot be taxed by or for governments under which they do not exist, and whose benefits they, therefore, do not share,—is elementary.

*State Treasurer v. Auditor General*, 46 Mich., 224, 230, 231.

*Callam v. Saginaw*, 50 Mich., 7, 11.

*Louisville Ferry Co. v. Kentucky*, 188 U. S., 385.

*D. L. & S. W. R. E. Co. v. Pennsylvania*, 198 U. S., 341.

1 Cooley on Taxation (3d Ed.), 84.

In another place, the same writer says:

“Those cases in which it has been held incompetent for a state or municipality to levy taxes on persons or property not within its limits have generally indicated the want of jurisdiction over the subject of the tax as the ground of invalidity. But such a burden would be inadmissible, also, for the further reason that, as to any property or person outside the district in which the tax was levied, the want of legal interest in the tax would preclude its being subjected to the burden. A state can no more subject to its power a single person or a single article of property whose residence or legal *situs* is in another state, than it can subject all the citizens or all the property of such other state to its power. The accidental circumstance that it may happen to have the means of reaching one and not the rest can make no difference; there must be an interest in the subject-matter of the tax; there must be between the state and the taxpayer a reciprocity of duty and obligation; and these in contemplation of law would be wholly wanting in the case supposed.”

1 Cooley on Taxation (3d Ed.), 249.

Judson on Taxation, Sec. 354.

2. The violation of this principle by the Michigan statute is not casual or slight (if that could make any difference), but is a consequence of the fundamental idea of the "average-rate" plan (when not restricted to averaging the taxes of those communities within which some part of the railroad is situated).

The statutory idea is that it is just to equalize the *aggregate* tax burden of a railroad and the *aggregate* tax burden of others; and that this equalization of tax burden should be effected—not merely between the railroad and others in the same places as the railroad—but between the railroad and *all* others in the state, without reference to the fact of their location within, and benefit through, different and widely separated local governments. Concretely, again, the conscious purpose of the legislature was to make the North-Western Railway Company pay on its property in the Upper Peninsula a state tax equal to the total of state and local taxes paid on property of like value in Detroit and the other cities of Southern Michigan; notwithstanding the fact that no part of the North-Western road is in Southern Michigan. *The statute, therefore, directly contemplates, and seeks, that the tax paid by the North-Western Railway Company to the state shall be enough higher than the citizens of Detroit pay the state to balance or equalize what taxes the latter pay for local purposes.* That follows necessarily from the purpose of equalizing aggregate tax burdens. Consequently, the railroad is by the very design of the statute made to pay more state tax *in order that the citizens of Detroit may pay less*, because the latter pay Detroit's local taxes, and in proportion to such local taxes. That is taxing the North-Western

Railway Company for the relief and benefit of Detroit's citizens, as really and as designedly as if it were required to contribute directly towards Detroit's local outlays.

Putting the matter another way,—if Detroit raises \$5,000,000 in local taxes, the average-rate paid by the North-Western Railway Company will be one figure. If Detroit's local taxes, instead, are made \$15,000,000, the average-rate paid by the North-Western Railway Company becomes higher. The difference in what the North-Western Railway Company pays the state is *solely because Detroit's citizens pay more local taxes in the latter case*. Now, in consequence of the increase of the average-rate applied to railroad property, the rate of state tax paid by Detroit's citizens either is reduced (if the state needs no more revenue than it would have gotten from the lower average-rate), or remains the same (if the state needs more revenue, and would have been compelled to raise the general rate of state tax but for the increase of the average rate). In either case the Detroit citizen pays less state tax than he would but for the increase of the railroad tax on account of the increase of Detroit's local taxes; *i. e.*, the Detroit citizen pays less state tax, just in proportion as the North-Western Railway Company pays more state tax, on account of Detroit's local expenses. That means that *the North-Western Railway Company is taxed, not only because, but indirectly to relieve the Detroit citizens from part of the cost, of Detroit's local government and local investments*. And such is the plain design of the statute; involved in, and proceeding from, its purpose of "equalizing" aggregate



tax burdens—making a railroad pay a state tax large enough to balance what others, *everywhere* in the state, pay for local as well as state taxes.

Such a plan unmistakably taxes the North-Western Railway Company on its property located entirely in Northern Michigan to help the inhabitants of Detroit in their local government and their municipal improvements.

#### IV.

Taxation always involves "apportionment." The more obvious branch of that legislative problem concerns the distribution of a single tax among its several contributors. The larger aspect of the matter, however, is in the problem of distributing the burden of the state's entire revenue among all who contribute to it through any kind of tax. The legislature has to decide, not only what total revenue the state should have, but what parts of that revenue shall be exacted from different classes of taxpayers. Ordinarily, the relation prescribed by the legislature between the taxes of different classes of taxpayers is implicit, and not directly announced; but the prescription of that relation is not less real or important. The statute under consideration, however, creates an express and definite relation between railroad taxes, on the one hand, and all other persons' taxes, on the other hand. It prescribes, and sets forth as its chief purpose, that the tax paid by a railroad to the state on property of given value shall be equal to the average tax paid by others *throughout the state* to the state *and to their respective local governments*. A rule of apportionment

of tax burdens is, therefore, made the primary feature of the statute. That rule is constitutionally indefensible, and wholly deceptive in its pretense of justice.

1. The very nature of apportionment involves that the legislature determine and prescribe how the tax of one class shall compare with the taxes of other classes *for the expenses of the same governments*. It is not apportionment of taxes, and it is not taxation, when the legislature directs that A's total taxes for one set of governments under which he lives and whose benefits he enjoys, shall be equal, or bear any other prescribed relation, to B's total taxes for a *different* set of governments, under which A does not live and whose benefits he does not share. What would be thought of this statute if it said that a railroad should pay a state tax to Michigan equal to the taxes paid, on the average, for state and local purposes in Ohio? That would be absurd, and a transgression of the powers of the legislature, on its face; because it is the business of the legislature to fix any man's tax in what it considers a just relation to what others contribute for the benefit of the same governments,—not for the wholly different benefits of different governments.

But *this statute of Michigan is in principle not different from one equalizing appellant's Michigan tax with taxes in Ohio*; for appellant no more lives under or gets the benefit of the local governments of the counties, cities, towns, villages and school districts of Michigan in which it has no property, than it gets the benefit of the state and local governments of Ohio. The impossibility of saying that railroad property is benefited by the operations of the local governments in

whose jurisdiction no part of its line is situated (when, too, the laws of Michigan treat no other of the thousand different kinds of property as so benefited) has already been sufficiently presented. See Point II, on pp. 49-58, *ante*. The purely private character of the local enterprises for which local taxes are largely levied, as already established by the Michigan Supreme Court, may, however, be particularly recalled.

While the decisions concerning apportionment naturally speak primarily concerning distribution of one tax, rather than several, they illustrate forcibly the presence of this feature always in taxation. Thus, Judge Cooley declared, for the Michigan Supreme Court:

"I understand that in order to render valid a burden imposed by the legislature under an exercise of the power of taxation, the following requisites must appear:

"1. It must be imposed for a public, and not for a mere private, purpose. \* \* \*

"2. The tax must be laid according to some rule of apportionment; not arbitrarily or by caprice, but so that the burden may be made to fall with something like impartiality upon the persons or property upon which it justly and equitably should rest. *A state burden is not to be imposed upon any territory smaller than the whole state, nor a county burden upon any territory smaller or greater than the county.* Equality in the imposition of the burden is the very essence of the power itself and though absolute equality and justice are never attainable, the adoption of some rule tending to that end is indispensable.

"3. As a corollary from the preceding, if the tax is imposed upon one of the municipal subdivisions of the state only, the purpose must not only be a public purpose as regards the people of that subdivision, but it must also be local, that is to say, the people of that

municipality must have a special and peculiar interest in the object to be accomplished which will make it just, proper and equitable that they should bear the burden, rather than the state at large or any more considerable portion of the state."

*People v. Twp. B. of Salem*, 20 Mich., 453, 474.

In his text-book, the principle is again well stated;—

"Taxes are collected as *proportionate* contributions to public purposes. But to make them such in any true sense they must not only be such as between the persons called upon to pay them, *but also as between those who ought to pay them*. It is therefore of prime necessity in taxation that it should first be determined what public—whether state or local—should bear the burden, and that it should then be imposed *ratably as between those who constitute that public*. If a single township were to be required to levy upon its inhabitants and collect and pay over to the state whatever moneys were necessary to pay the salaries of the several state officers, it would be apparent, 'at first blush,' that the enactment was not one which, either in its purpose or tendency, was calculated to make the taxpayers of that township contribute only their several proportions to the public purpose for which the tax was to be levied. *If, on the other hand, for the purpose of purchasing and ornamenting a city park or any other improvement of mere local convenience, a tax should be imposed upon the whole state, it would be equally manifest that equality and justice were not the purpose of the imposition, but that, if carried into effect, the people of the state not residing in the city would be compelled to contribute to a purpose in which, in a legal sense, they had no interest whatever.*"

"The cases suggested are extreme cases, but the principle that controls them is universal, and a disregard of it is fatal to the tax; and whether the unjust consequences are slight or serious is unimportant. Where the principles of taxation are disregarded, every one is entitled to claim strict legal right; for in

no other way can the power be restrained from perversion and oppression. *It can therefore be stated with emphasis that the burden of a tax must be made to rest upon the state at large, or upon any particular district of the state, according as the purpose for which it is levied is of general concern to the whole state, or, on the other hand, pertains only to the particular district.* A state purpose must be accomplished by state taxation, a county purpose by county taxation, or a public purpose for any inferior district by taxation of such district. This is not only just but it is essential. To any extent that one man is compelled to pay in order to relieve others of a public burden properly resting upon them, his property is taken for private purposes, as plainly and as palpably as it would be if appropriated to the payment of the debts or the discharge of obligations which the person thus relieved by his payments might owe to private parties. 'By taxation,' it is said in a leading case, 'is meant a certain mode of raising revenue for a public purpose in which the community that pays it has an interest. An act of the legislature authorizing contributions to be levied for a mere private purpose, or for a purpose which, though it be public, is one in which the people from whom they are exacted have no interest, would not be a law, but a sentence commanding the periodical payment of certain sums by one portion or class of people to another.' This principle has met with universal acceptance and approval because it is as sound in morals as it is in law."

1 Cooley on Taxation (3rd Ed.), 225-227.

For special examples see:

*A. T. & S. F. Ry. Co. v. Clark*, 60 Kas., 826, 830.

*Hutchinson v. Ozark Land Co.*, 57 Ark., 554.

*State v. Laughlin*, 75 Mo., 145.

*State v. Township Committee*, 36 N. J. Law, 66.

*Kansas City v. Whipple*, 136 Mo., 474, 484.  
*State v. Hoyt*, 71 Vt., 59.

The aspect of the matter directly in hand is well presented by the Supreme Court of Wisconsin, which holds that the rule of uniform taxation "requires such uniformity, in case of a state tax, to extend throughout the state; in case of a county tax, to extend throughout the county; in case of a city tax, to extend throughout the city; and, in case of a town tax, to extend throughout the town."

*Lund v. Chippewa County*, 93 Wis., 640, 647.  
*State, ex rel. City of New Richmond v. Davidson*, 114 Wis., 563, 575-578.  
*State, ex rel. Garrett v. Froelich*, 118 Wis., 129, 140.

In the last case the court said:—

"To come within the rule of uniformity, as thus defined, it is necessary, not only that the object of the appropriation in question should be public, but also that it should subserve the common interest and well-being of the people of the state." (P. 140.)

It is true that these Wisconsin cases relate to a question of "uniformity" under the state constitution; but the principle they announce is applicable none the less to all apportionment of taxes. In the absence of a constitutional requirement (and, indeed, in many states even under such a requirement) taxation need not be equal between different classes. The legislature may tax the different classes unequally, if it regards that as just. *But*, what it must consider and decide is whether the taxes of different persons for the same government or the same set of governments shall be

equal or unequal; and, if the latter, how much *that* inequality shall be. The legislature has no authority, in distributing taxes, to make the tax of any class depend upon, and bear a definite relation to, taxes paid by other classes to governments having no jurisdiction over, and not acting for the benefit of, the first class.

Apportionment on a proper principle is essential in all taxation.

“When the state has need of the property of citizens for its sovereign purposes, it may lawfully appropriate it against the will of the owner either under the power to tax or the right of eminent domain. There is a difference in the two cases which is vital. When property is appropriated under the right of eminent domain, a particular item or parcel is taken, because for public purposes there is special need of it, and the state takes it under proceedings which amount, so far as the owner is concerned, to a forced sale. *But taxation is based upon the idea of calling upon the people for equal and proportional contributions to the public wants, that the burdens of government may fall ratably upon all who in justice should bear them. Apportionment of the burden is therefore a necessary element in all taxation.*”

1 Cooley on Taxation (3rd.), 411.

To the same effect:—

Judson on Taxation, Sec. 340.

*Morton v. Comptroller*, 4 La. An., 454.

Field, J., in

18 Fed. Rep., p. 400.

*City of Lexington v. McQuillan's Heirs*, 8

Dana (Ky.), 513, 517-519.

Field, J., in  
13 Fed. Rep., 722, on p. 734.

Sawyer, J., in  
18 Fed Rep., on p. 424.  
*Williams v. Mayor of Detroit*, 2 Mich., 560,  
572.

Beasley, Ch. J., in  
*Central R. R. v. State Board*, 48 N. J. Law, 1,  
on p. 11.

Depue, J., in  
*State v. Township of Redington*, 7 Vroom, 66.

2. The result of ordering a relation of "equality" between a railroad's taxes and the taxes of others in places where the railroad is not, in any part, situated is to neglect utterly, and leave haphazard, the question how the taxes for those governments which have jurisdiction over the railroad and whose benefits it does share (viz., beside the state, the counties, cities, towns, villages and school districts which the railroad does enter) shall be distributed among the persons and property under those governments. We will take the North-Western Railroad again for an example. Whether its taxes on its property in the Upper Peninsula shall be equal to, more than, or less than, the taxes (state and local) on other property of like value in the Upper Peninsula, will depend each year on the accidental relation of local taxes in the northern and southern municipalities of the state. If local taxes are higher one year, on the average, in the Lower than in the Upper Peninsula, the "average-rate" applied to the North-



Western Company's property will be *higher* than the total rates for state and local purposes applied to other property in the Upper Peninsula. On the other hand, if the next year local taxes are higher, on the average, in the Upper Peninsula than they are in the southern part of the state, then the "average-rate" applied to the North-Western Company's property in the Upper Peninsula (being largely, and, indeed, chiefly, dependent on local taxes in that larger part of the state constituting the Lower Peninsula) will that year be *lower* than the total rates for state and local purposes on other property in the Upper Peninsula. If equality of rates on the railroad property and on other property in the same places ever occurs, under this average-rate plan, it will be the strangest and most infrequent of accidents.

It is thus obvious that *the legislature has not said at all whether a railroad shall be taxed equally with, or higher or lower than, other property under the same governments*. One year the railroad tax will be higher, another year lower; and, doubtless, it will never be the same as the tax on other property in the same places. The legislature, therefore, in prescribing a relation between railroad tax and other taxes for governments under which the railroad does *not* live, has entirely neglected the question of what relation it deems just, and will impose, between railroad taxes and the taxes on other property in the same communities. *The problem of real and just apportionment it has not attacked at all; and it has fixed no rule concerning it*. It is left to depend on the varying action of the hundreds of local legislatures of Michigan, from year to year, in

determining questions of purely local policy, partly governmental and largely domestic and private.

The charge imposed upon a railroad under the Michigan "average-rate" plan is not a tax, for the reason just stated, viz., that it is not a charge which the legislature establishes as that portion of the expenses of the governments whose benefits the railroad enjoys which it is just for the railroad to pay in comparison with what others are required to contribute for support of the same governments. The sole pretense of apportionment, underlying the "average-rate" plan, is not apportionment at all; but an exaction unrelated to other persons' taxes for those governments within whose jurisdiction the railroad exists.

3. What becomes of the claim for this statute that it seeks just taxation, because its aim is to make railroads pay taxes at the same rate as other people? That is just what it does *not* do, in any true sense. Instead, as already seen, it operates necessarily to make a railroad pay a tax at a rate one year higher, and another year lower, than others pay in the same places and for the same governments. And, whether the railroad rate of tax shall be higher or lower is chiefly controlled by the action,—not of the governments where the railroad is situated—but of governments having no jurisdiction over the railroad, acting on questions of local policy (in deciding which they neither should nor do consider the interests of any persons outside their jurisdiction), and performing operations and conducting local enterprises in which the railroad has no share and from which it derives no benefit.

Justice means, in taxation as in other things, like

treatment, under like circumstances, or under circumstances not fairly calling for unlike treatment. *Like treatment under unlike conditions is as apt to be unjust as unlike treatment under like conditions.* Why is it just to collect the same amount of tax on a given amount of property when in the case of one taxpayer the property is in a city of the Upper Peninsula, or in the country there, and in the case of the other taxpayer the property is in Detroit or other large city in the more developed southern part of Michigan? Why should the taxes be "equalized" on such differently situated properties? *Why not as well say that it is just to make property in northern Michigan pay the same rate of tax as other property just across the state line, in Wisconsin?* How is it just to tax a railroad in one place after a plan that seeks "equality" of its tax-rate with the rate in other places which spend millions for gas-works, water-works, street-railways, parks, libraries, baths and other private investments in whose benefit that railroad (in another place, entirely) does not share? Such taxation seeks to charge different persons the same amount, it is true, *but for different things*; and, as we have already seen, charges *different* amounts to railroads and others *for the same thing*, viz., the benefits of those governments where the railroad is situated.

Nor is the matter helped by the "averaging" which this statute does. That does not alter or disguise the nature of the process. It is not different to make the tax on the North-Western Railroad property in northern Michigan depend upon the taxes of *all* the cities in the Lower Peninsula from making it depend on the

taxes of Detroit alone. The property of a railroad in northern Michigan is no more benefited by the local governments and local investments of one than of any other city in southern Michigan. There is no more reason why that railroad should pay more tax because Lansing or Kalamazoo or Grand Rapids has a park, or a street-railway or a library or gas-works or water-works, or because all the cities of southern Michigan have those things, than because Detroit has them. No quality of fairness is added because the local taxes of many communities are used in computing the "average-rate," when the use of the taxes of *any* of those communities is unjust.

Let it be remembered, too, that there is nothing in the character of a railroad that will justify application to it of the plan of this Michigan statute, which will not as well support its application to any kind of property. The plan, if allowable at all, is capable of indefinite expansion. Why not say at once that *any* property, situated in more than one political subdivision of the state, shall be taxed at an "average-rate," derived from the state tax and the local taxes everywhere in the state? Here again comes out the vast and fundamental difference between an average-rate, founded upon the taxes in those places where some part of the property (if an extended unit) is situated and, on the other hand, an average-rate founded largely upon taxes in places where no part of the property is situated to which the average-rate is applied. *If the process of the present statute can be applied to property in eight out of the eighty-three counties of Michigan (as in the case of the North-Western Railroad), it surely can also be*

*applied to any property situated in two counties. Where is the line at which it must stop?*

4. The Michigan Supreme Court, when declaring unconstitutional an identical "average-rate" statute (before the amendments of 1900 to the state constitution were adopted) said:

"Again,—treating the tax imposed as one on property based on valuation, and not as a specific tax, the corporations and associations mentioned in this act can no more be discriminated against, as to the assessments made or taxes exacted, than can merchants, manufacturers or farmers. The tax levied in this act is the average rate of all taxes levied by the state, counties and municipalities throughout the state. *A telephone company in Tecumseh, where the local taxation added to the state tax may not exceed one and one-half per cent. may, under this act, be required to pay two and one-half per cent. Under the Atkinson Bill a railroad in the Northern Peninsula is required to pay the same rate as one having the terminus in Detroit and extending through territory in which local improvements are expensive and schools are maintained at great cost.*" (p. 108.)

*Pingree v. Auditor General*, 120 Mich., 95.  
on page 108.

The court evidently had in mind the impropriety of making the tax on property in one or more places depend upon, and increase with, the taxes in other places for governments and local improvements which the taxed property does not enjoy.

## V.

*The power of fixing the rate (and so the amount) of tax upon appellant's property is delegated by this statute of Michigan to the various local legislatures of the counties, cities, towns, villages and school-districts of Michigan. It is upon their legislative action that the rate chiefly depends. And, as appellant's railroad is largely outside the jurisdiction of those local legislatures, and is none of it within the jurisdiction of more than a limited local group of those legislatures (though the tax results from the action of all in the state), the tax is imposed by legislative bodies that do not represent the taxpayer.*

1. It is not enough for the state legislature to say that there shall be a tax; and then leave the amount of the tax to be fixed by others. There is no tax until its amount is prescribed and the body that determines the amount levies the tax.

"An indeterminate tax is in law no tax."

Cooley on Taxation, (3d Ed.), 557.

*Morton v. Comptroller General*, 4 So. Car., 430, 454.

*Houghton v. Austin*, 47 Cal., 646.

*S. F. & N. P. R. R. Co. v. State Board*, 60 Cal., 12, 34.

This is evident. A legislature that taxes must determine the tax in view of what it considers the state needs and of what it considers the particular class of taxpayers may justly be required to pay. The legislative power of taxation is to pass upon those

questions; the exercise of the power is a decision of those questions; and they are not decided until the amount of tax is fixed.

The Michigan Constitution expressly requires all taxing statutes to state the tax, and indeed to state it directly, *and not by reference*. It provides:

"Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

Michigan Constitution, Art. XIV, Sec. 14.

This provision was borrowed from the Constitution of New York, after it had been construed by the highest court of that state in

*People v. Board of Supervisors of Kings County*, 52 N. Y., 556.

In that case, a statute imposing a tax of three and one-half mills per dollar "or so much thereof as may be necessary" for specified purposes was held not to state the amount of tax, and, therefore, to violate the Constitution.

2. And the legislature that taxes, and therefore fixes the amount of tax, must be that which represents the taxpayer; that is, the legislature which is chosen by the community which includes the taxpayer or his property. Nothing is more fundamental than this requirement.

*McCulloch v. Maryland*, 4 Wheat., 427.

*Providence Bank v. Billings*, 4 Pet., 514, on page 563.

*Wilcox v. Paddock*, 65 Mich., 23, on pages 28 and 29.

*People v. Hurlbut*, 24 Mich., 44; especially the language of Judge Christianity on pages 64-66, Chief Justice Campbell on page 89, and Judge Cooley on pages 97-110.

*Board of Park Com'rs. v. Detroit*, 28 Mich., 227, on pages 244, 245, 247, 249 and 250.

*Board of Com'rs. v. Abbott*, 34 Pac. Rep., 416 (Kas.).

*Schultes v. Eberly*, 82 Ala., 242; especially on page 246.

*Parks v. Board of Com'rs*, 61 Fed., 436.

*Harward v. St. Clair Drainage Co.*, 51 Ill., 130; 134-136.

*United States v. New Orleans*, 98 U. S., 381, 392.

*Thompson v. Allen County*, 115 U. S., 550, 555.

*City of Lexington v. McQuillan's Heirs*, 8 Dana (Ky.), 513, 517, 518.

3. The local legislature of a county, city, town, village or school district of Michigan does not represent railroads or anybody else, when they and their property are wholly beyond the boundaries of the community choosing such legislature; nor does it represent railroads or other persons that live elsewhere but have *some* property within its jurisdiction, as to other property situated in other jurisdictions.

(a) In order to be representative, a legislature must be, not only chosen by the community for which it acts, but likewise chosen to act for, and upon, the persons or property affected. Nobody outside the limits of a particular county, city, village, town or



school district participates in the selection of the members of its local legislature; and the purpose of their selection is to legislate for the particular community which chooses them.

Judge Cooley said:

"A representative, as we understand it, is one chosen by a principal to exercise for him a power or perform for him a trust. In that sense, the mayor of Detroit is a representative for some purposes, the members of the common council for others, and the members of the board of education for still others. But the idea of a representative implies not merely a person chosen for some purpose, but a person chosen for a particular purpose, and confided in to represent his principal therein. One person may be thought suited to one duty, and another to another; and the right to be represented implies a right not merely to name the person, but also to designate the trust that shall be confided to him. That government would be but a mockery of republican institutions, which, while leaving to the people a choice of officers, should afterwards determine whether any particular officer who had been selected by the people should be a legislator or a judge, a governor or a policeman."

*Board of Park Com'rs v. Common Council of Detroit*, 28 Mich., 227, 245.

*Cook Farm Co. v. Detroit*, 124 Mich., 426.

Chief Justice Waite declared:

"We have in our political system a government of the United States and a government of each of the several states. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a state, but his rights of citizenship under one of these governments will be different from those he has under the other.

Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights. In the formation of a government, the people may confer upon it such powers as they choose. The government, when so formed, may, and when called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction; but it can exercise no other."

*United States v. Cruikshank*, 92 U. S., 542, 549.

(b) The various local legislatures, too, *consider* in their action only local conditions and needs. They have, in fact, no right to consider anything else. And they cannot be held to represent persons or property whose interests they do not consider.

(c) A county, town or school district board, or a city or village council, cannot be considered representative of railroads, but of nobody else, as to property outside the local community. It no more does, or can, act for one than for another part of the persons and property throughout the state.

4. We come, then, to the main point, that the amount of tax required to be paid on railroad property is largely, and, indeed, chiefly, determined by the local legislatures throughout Michigan in their legislative prescription of local taxes; for by the amount of those taxes the railroad tax is chiefly measured. Various considerations make this manifest. Indeed, it is the obvious reality. Pertinent authority, too, exists.

(a) The actual dependence of the "average-rate" upon the amount of local taxes everywhere in the state is undeniable; and the action which determines that amount is *purely legislative*. The local legislatures, in fixing the amount of local taxes, have the same full, legislative discretion as belongs to the state legislature itself. They are not using executive or administrative power, or doing executive or administrative work. They are using legislative power and doing legislative work. They are deciding and imposing legislative policies. How, then, can it be that the amount of appellant's tax, which depends on and is measured by the legislative decisions of the local legislatures, is not legislatively determined by those legislatures?

This case is entirely different from those in which the operation of a statute is made to depend upon a contingent *fact*, or upon the decision of an executive or administrative officer as to such fact. Then, the statutory rule does not depend upon, or vary with, another body's legislative discretion; indeed, does not depend upon, or vary with, anybody's discretion at all. The statutory rule remains all the time unaltered in all its fundamental features; and, besides that, the thing on which the rule's operation depends is *not further legislation*, by another body. For example,—

In *Miller v. Mayor of N. Y.*, 109 U. S., 385, this Court decided that legislative power was not delegated to the Secretary of War by an act of Congress authorizing construction of a bridge across the East River, on plans not prescribed in detail by Congress, but such as the Secretary of War should decide would "conform to the prescribed conditions of the act, not

to obstruct, impair or injuriously modify the navigation of the river." (See act quoted on page 387.) This act did not give the Secretary power to fix the character of the bridge arbitrarily (and so decide what, if any, obstruction of navigation should be allowed), but merely allowed that official to determine a pure fact, viz., whether the plans submitted by the Company would "obstruct, impair or injuriously modify" navigation. The act itself forbade any such obstruction; and, as Justice Field said, "By submitting the matter to the Secretary, Congress did not abdicate any of its authority to determine what should or should not be deemed an obstruction to the navigation of the river. It simply declared that upon a *certain fact* being established, the bridge should be deemed a lawful structure, and employed the Secretary of War as an agent to ascertain that fact." (p. 393.)

Again, in *Field v. Clark*, 143 U. S., 649, this Court upheld the Congressional Act of October 1st, 1890, by which it was made the duty of the President to suspend the free introduction of sugars, molasses, coffee, tea and hides, (allowed by that act) from countries which were found by him to impose upon the importation of those articles from this country "reciprocally unequal and unreasonable" duties (p. 680); in which event the former tariff of this country should again apply. The President, therefore, was made an agent to ascertain and proclaim the *fact* as to the state of other countries' tariffs; upon the happening of a given fact (which the President executively determined to exist, *but did not create*), the statute by its own declaration became inoperative, and the former tariff rule revived. Mr. Justice Harlan said:

“That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution. The act of October 1, 1890, in the particular under consideration, is not inconsistent with that principle. It does not, in any real sense, invest the President with the power of legislation. For the purpose of securing reciprocal trade with countries producing and exporting sugar, molasses, coffee, tea and hides, Congress itself determined that the provisions of the act of October 1, 1890, permitting the free introduction of such articles, should be suspended as to any country producing and exporting them, that imposed exactions and duties on the agricultural and other products of the United States, which the President deemed, that is, which he found to be, reciprocally unequal and unreasonable. Congress itself prescribed, in advance, the duties to be levied, collected and paid, on sugar, molasses, coffee, tea or hides, produced by or exported from such designated country, while the suspension lasted. *Nothing involving the expediency or the just operation of such legislation was left to the determination of the President.* The words, ‘he may deem,’ in the third section, of course, implied that the President would examine the commercial regulations of other countries producing and exporting sugar, molasses, coffee, tea and hides, and form a judgment as to whether they were reciprocally equal and reasonable, or the contrary, in their effect upon American products. But *when he ascertained the fact that duties and exactions, reciprocally unequal and unreasonable, were imposed upon the agricultural or other products of the United States by a country producing and exporting sugar, molasses, coffee, tea or hides, it became his duty to issue a proclamation declaring the suspension, as to that country, which Congress had determined should occur. He had no discretion in the premises except in respect to the duration of the suspension so ordered. But that related only to the enforcement of the policy established by Congress. As the suspension was absolutely required when the Presi-*

dent ascertained the existence of a particular fact, it cannot be said that in ascertaining that fact and in issuing his proclamation, in obedience to the legislative will, he exercised the function of making laws. Legislative power was exercised when Congress declared that the suspension should take effect upon a named contingency. What the President was required to do was simply in execution of the act of Congress. It was not the making of law. *He was the mere agent of the law-making department to ascertain and declare the event* upon which its expressed will was to take effect. It was a part of the law itself as it left the hands of Congress that the provisions, full and complete in themselves, permitting the free introduction of sugars, molasses, coffee, tea and hides, from particular countries, should be suspended, in a given contingency, and that in case of such suspensions certain duties should be imposed.

'The true distinction,' as Judge Ranney speaking for the Supreme Court of Ohio has well said, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' *Cincinnati, Wilkinson & Co. Railroad v. Commissioners*, 1 Ohio St., 88. In *Moers v. City of Reading*, 21 Penn. St., 188, 202, the language of the court was: 'Half the statutes on our books are in the alternative, depending on the discretion of some person or persons to whom is confided the duty of determining whether the proper occasion exists for executing them. But it cannot be said that the exercise of such discretion is the making of the law.' So, in *Locke's Appeal*, 72 Penn. St., 491, 498: 'To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.' The proper distinction the court said was this: 'The legislature cannot delegate

its power to make a law; but it can make a law to delegate a power to *determine some fact or state of things* upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation.' "

Of this case it is to be noted, too, that Congress may doubtless exclude foreign goods altogether, if it sees fit, and hence may impose such conditions as it pleases upon their admission.

(b) The legislative action of the county, city, town, village and school district in determining the amount of local taxes, and so largely determining the "average-rate" of tax, is entirely *independent* of any rule prescribed by the state legislature to guide them. There is no standard or principle in Ch. 173, to which the action of the local legislatures is subordinate and must conform. On the contrary, their action is free and untrammelled; and it is Ch. 173 that is subordinate, and conforms to the local legislation, in respect of the amount of tax required of appellant.

Here is another fundamental peculiarity, and fault, of the Michigan statute; by which it is distinguished from the numerous cases holding that a legislature may properly empower executive or administrative officials to adopt *incidental*, executive rules of detail, which conform to the central plan and principles of a statute. For example,—

In *Butterfield v. Stranahan*, 192 U. S., 470, this Court held the "Tea Inspection Act" of March 2nd, 1897, not open to criticism because it empowered the

Secretary of the Treasury to establish "uniform standards of purity, quality and fitness for consumption of all kinds of tea" and itself declared that teas falling below those standards should not be imported. It was ruled that the statute created its own, fundamental standard of fitness for use, and merely allowed the executive officer to make incidental rules which in their true character were mere detail applications of the Congressional rule. Mr. Justice White said:

"The claim that the statute commits to the arbitrary discretion of the Secretary of the Treasury the determination of what teas may be imported, and, therefore, in effect vests that official with legislative power, is without merit. We are of opinion that the statute, when properly construed, as said by the Circuit Court of Appeals, but expresses the purpose to exclude the lowest grades of tea, whether demonstrably of inferior purity, or unfit for consumption, or presumably so because of their inferior quality. *This, in effect, was the fixing of a primary standard*, and devolved upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in the statute. The case is within the principle of *Field v. Clark*, 143 U. S., 649, where it was decided that the third section of the tariff act of October 1, 1890, was not repugnant to the Constitution as conferring legislative and treaty-making power on the President, because it authorized him to suspend the provisions of the act relating to the free introduction of sugar, molasses, coffee, tea and hides. We may say of the legislation in this case, as was said of the legislation considered in *Field v. Clark*, that it does not, in any real sense, invest administrative officials with the power of legislation. Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect,



amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted."

Like cases are:

*In re Kollock*, 165 U. S., 526; see pages 533, 536.

*St. Louis Consolidated Coal Co. v. Illinois*, 185 U. S., 203; 210-212.

(c) So far is it from true that the local legislatures act in execution of Ch. 173, that they act without any thought whatever of the object of that statute, viz., state revenue. They have no right to think of anything but what their several localities may wisely spend, with a view to their own public and proprietary ends. That is not execution of the state statute, but independent legislation.

(d) The law concerning proximate cause furnishes an instructive analogy. When a result ensues from the acts of two persons, of whom one acts after and independently of the other, the law attributes the result wholly to the later actor. Intervening, independent action separates from the result the doings of any prior actor; which latter are the occasion or opportunity for the final event,—not the cause. So here. The independent, legislative action of the county, city, town, village and school district legislatures *intervenes* between anything the state legislature has done and the amount of tax on appellant's property.

(e) And, particularly, the local taxes are (as already fully seen) largely for private investments of the same localities whose legislatures levy them; and those investments the corporations taxed under Ch.

173 do not share. That means that the persons who compose the local legislatures have (both individually and as representatives of their respective communities) a *private interest* in the amount of taxes they order, which in no way concerns those persons, including appellants, who are outside the local community. It may be questioned whether even purely executive or administrative functions can properly be given, under a republican form of government, to officials who are not chosen by the community whose members are to be affected by their action. For example,—Could Congress commit to the members of a particular state legislature, or to the members of all of them, the executive powers that were given to the Secretary of War in the case of *Miller v. New York* (109 U. S., 385), or that were given to the Secretary of the Treasury in the Tea Inspection case (192 U. S., 470)? It would seem that even executive powers can be exercised only by officials who *represent* the persons over whom they are given power. But, beyond that, we have in the present case a statute which makes the rate of tax charged for state purposes upon appellant's property depend upon the action of local officials who not merely are largely not representative of appellant (which has no office or property within their communities), but who in their action are *pursuing interests that are purely private*,—the convenience and prosperity and *investments* of their own, particular localities—and are not indifferent, or disinterested, in their action. That certainly shows that the work of the local legislatures, in imposing local taxes, cannot be allowed, in any view of their functions, to fix the amount of appellant's tax.

In *St. Louis Consolidated Coal Co. v. Illinois*, 185 U. S., 203, where mine inspectors were allowed by the statute to fix their own fees, within the limits of \$6.00 and \$10.00, for each inspection, it was held that such rule was a fair executive arrangement, inasmuch as the inspectors were paid a salary, and their compensation was thus independent of their own decision. But Mr. Justice Brown said:

"Objection is made upon the ground that it gives to each mining inspector not only the right to determine the number of times each mine shall be inspected, but the fees to be charged in each case. *If his discretion were unlimited in this direction and the fees were retained by himself, there would be much force in the suggestion; but the truth is that the amount of the fee must be in each case somewhere between \$6.00 and \$10.00, and must be paid to the Secretary of the Bureau of Labor Statistics, and by him covered into the State treasury, to be held as a fund for the payment of the salaries of the mining inspectors. Each inspector provided for by the act receives for his services \$1,800.00 per annum, to be paid quarterly out of the funds in the state treasury received for the inspection fees, and in the event of such fees being inadequate to compensate such inspectors in the amount provided for herein, the deficiency of the salaries shall be paid out of the money in the state treasury not otherwise appropriated. It appears, then, first, that the state inspector receives a regular salary, neither increased nor diminished by the number of inspections or the amount paid for each inspection; and, second, that he receives such salary directly from the Bureau of Labor Statistics and not from the fees paid to him therefor. As his compensation is dependent neither upon the number of his visits nor upon the amount of his fees, it is difficult to see how he would gain by multiplying one or magnifying the other. We know of no reason why the legislature should deprive itself of the best attainable evidence of the facts it seeks to make determinative of these two questions."*

What, then, can be thought of a law that makes the amount of public taxes to be paid by one class of persons depend upon the decisions of other persons (not representative of the taxpayers) as to what amounts they will spend for their purely private enterprises?

(f) Let us now turn to cases that, it is submitted, are directly in point to show that Ch. 173 delegates the taxing power to the various local legislatures; and, first, cases themselves concerning taxation.

*Houghton v. Austin*, 47 Cal., 646.

*People v. Supervisors of Kings County*, 52 N. Y., 556; 566-567.

*Board of Commrs. v. Abbott*, 52 Kas., 148.

*Parks v. Board of Commrs.*, 61 Fed., 436.

*Central R. R. Co. v. State Board*, 49 N. J. L., 1; 17, 18.

*Muldenberg Co. v. Morehead*, 46 S. W. Rep., 484 (Ky.).

*Fleming v. Dyer*, 47 S. W. Rep., 444 (Ky.).

*Dawson v. Ward*, 71 Tex., 72, 76.

*Wade v. State*, 22 Tex. App., 629.

*McCabe v. Carpenter*, 102 Cal., 469.

*Schultes v. Eberly*, 82 Ala., 242.

*Wells v. City of Weston*, 22 Mo., 384.

*Wilcox v. Paddock*, 65 Mich., 23; 28, 29.

*State v. Mayor of Des Moines*, 103 Ia., 76.

*Marr v. Enloe*, 9 Tenn., 452; 454.

*Board v. Houston*, 71 Ill., 318.

*Gage v. Graham*, 57 Ill., 144.

The following cases give instances of delegation of legislative power, in other fields than taxation:

*King v. C. F. Ins. Co.*, 103 N. W. Rep. (Mich.), 616.

- Elliott v. Detroit*, 121 Mich., 611.  
*Bradshaw v. Langford*, 73 Md., 428.  
*People v. Parks*, 58 Cal., 624; 641-3.  
*Dowling v. Lancashire Ins. Co.*, 92 Wis., 62.  
*O'Neil v. Ins. Co.*, 166 Pa., 77.  
*State v. Bound Brook*, 48 At. Rep. (N. J.),  
 1022.  
*Stevens v. Truman*, 127 Cal., 155.  
*Jernigan v. Madisonville*, 102 Ky., 313.  
*Schaezlein v. Cabaniss*, 135 Cal., 466.  
*Harmon v. State*, 66 Ohio St., 249.  
*Beasley v. Ridout*, 94 Md., 641; 658.  
*State v. Rogers*, 73 N. E. Rep. (Ohio), 461.

In *Houghton v. Austin*, 47 Cal., 646, the statute was that a State Board, beside having equalizing powers, should "determine and transmit to the Board of Supervisors of each county the rate of the state tax to be levied and collected, which *after allowing for delinquency in the collection of taxes* must be sufficient to raise the specific amount of revenue directed to be raised by the legislature for state purposes." (Page 648.) This was held to delegate to the State Board the power of fixing the rate of state tax because that Board was given power to add to the rate resulting directly from state appropriations an indefinite sum for expected delinquencies in collection. The Court said:

"This section of the Code attempts to confer upon the State Board the power to add any sum to the amount of tax to be levied by law. We are of opinion that *the Legislature cannot commit to the Board this power to increase (by way of allowance for delinquency or otherwise) the amount of the tax to be paid by the people.*

In the course of the argument it seemed to be admitted that the Board had added to the amount directed to be raised by the Legislature a percentage which, in their opinion, would be sufficient to cover not only delinquencies, but 'the costs and expenses of collection.' If the power can be exercised at all, the Board may add the same percentage, calling it a percentage to meet delinquencies, which they in fact added to meet delinquencies and costs of collection. Or, as the sum needed is entirely a matter of conjecture, *and the additions to be made in the discretion of the Board*, they may add one hundred per centum, instead of the nineteen per centum which was added.

In case the Board shall over estimate the probable delinquencies, what shall become of the excess collected? Shall it be paid to the Controller as extra compensation for the arduous labors of that officer? It cannot be paid into the State Treasury, because the Legislature has directed a certain amount only to be raised.

The law-making power recognized by the Constitution may declare that the people shall be subjected to the payment of a certain sum; the State Board—if the section of the code is valid—may require the people to pay a greater sum. If it be said that the Legislature has subjected the people to the payment of a certain sum, and such additional sum as the State Board of Equalization shall see fit to name, we reply that neither can the Board be thus clothed with the power of imposing a subsidy, *nor can the Legislature refuse to fix definitely its amount.*

The members of the Legislature to whose judgment, wisdom and patriotism the high prerogative of making laws is intrusted, cannot relieve themselves of the responsibility by choosing other agencies; *cannot substitute the judgment, wisdom, and patriotism of others for their own.* 'One of the settled maxims of constitutional law,' says Judge Cooley, 'is that the power conferred on the Legislature cannot be delegated by that department to any other body or authority.' (Cooley, Const. Lim., 116, and cases cited.)" (Pages 652, 653.)

It was further said:

"Secondly, it is said that the legislative power is delegated in those cases in which a statute is to take effect conditionally, as on the happening of a future event. In this case we are not called on to decide whether a condition that a law shall go into operation only after a popular election, for example, renders the law nugatory. Nor is it necessary to inquire whether a distinction can be maintained between such a case and an attempt to transfer to an individual or board the power of changing the terms and conditions—the whole tenor and effect—of a statute after it shall have left the hands of the legislators. It is quite clear that in the latter class of cases the Legislature exceeds its authority. The law is not suspended until the happening of a certain event, but takes effect, it at all, when it leaves the Legislature; *the law itself, however, providing that it may be changed and a different law substituted, in the discretion of some person or persons named.* The Legislature cannot thus abdicate its functions in favor of its own creature." (Page 655.)

And again:

"The Political Code does not contain a specific and distinct statement of the tax to be levied. This was held to be necessary by the New York Court of Appeals in *The People v. The Board of Supervisors of Kings County*, the Court saying: 'They (the Legislature) must determine the amount necessary and adequate, and declare the amount to be levied absolutely.' *This is necessary, whether the Constitution, in terms, requires it or not, otherwise the whole legislative taxing power can be delegated.* Of course, however, the amount is fixed in effect when the Legislature has determined the data, so that the ascertainment of the amount becomes a mere matter of arithmetical computation." (Page 657.)

The case just cited by the California Court is *People v. Supervisors of Kings County*, 52 N. Y., 556. The character of the statute which was held invalid, as well

as the grounds of decision, will appear from the following quotation:

"The Constitution, prescribing the requisites of a law imposing a tax, is in harmony with the other provisions designed for the protection of the tax-payer. Its terms are precise and unambiguous, leaving no way of escape from a literal compliance with them, and no room for evasion by any lax interpretation. They are so plain they need no interpretation. It declares that 'every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.' (Const., art. 7, Sec. 13.)

The tax would have been well specified in amount but for a clause, found for the first time in a tax law. A tax of three and one-half mills upon the dollar of the assessed value of the real and personal property in the State is definite and certain. But the legislature have qualified the same and authorized the tax to be reduced if it should be found, upon a corrected estimate, that a lesser tax would give the necessary means. The law imposes a tax of three and a half mills per dollar, or so much thereof as may be necessary, to provide for the payment, etc. This is not a specific and distinct statement of the tax to be levied. It is simply a statement of the maximum tax to be levied, leaving it to the discretion of the administrative officers of the State to levy such tax as they shall find necessary up to the limit named. *The legislature cannot, under the Constitution, thus delegate the power of taxation. They must determine the amount necessary and adequate, and declare the amount to be levied absolutely.* If this form of enactment is allowable, a law authorizing a tax of fifty per cent. of the assessed value of the taxable property of the State, or so much thereof as might be necessary, would be valid, and the whole legislative taxing power delegated to the other departments of the State government. The law is invalid as not stating the tax imposed." (Pages 566, 567.)



The fact that the New York Constitution required, like the Michigan Constitution, that a tax law state the amount of tax does not lessen the force of this decision; because determination and statement of the amount of tax, either specifically or so that it can be known by "a mere mathematical computation," is (as the California Court declared) essential to the completeness of the tax in any case. The trouble was, in both the California and New York cases, that a *discretion* about the amount of tax was left by the legislature to others. Neither one is as palpable an instance of delegating the power to determine the amount of tax as Act 173, under which the state tax upon appellant's property is *left to the completely independent action of local legislative bodies*. Some sort of guidance was given by the legislature, in the California and New York laws, to the boards who determined the tax; none whatever is given by the Michigan act to the local legislatures, for they make their levies of local taxes in entire independence.

In *Commissioners of Wyandotte County v. Abbott*, 52 Kas., 148, the following statute was held unconstitutional to delegate the taxing power:

"That whenever a majority of the resident landholders within one-half mile on either side along the line of any regularly laid out road, within the terminal points mentioned in the petition, shall petition the board of county commissioners of any county in this state for the improvement of any road as located, or any part thereof, it is hereby made the duty of such county commissioners to cause the same to be improved, as hereinafter provided." (Laws of 1887, Ch. 214, Sec. 1.) (Pages 158, 159.)

The Court said:

"The first contention is, that chapter 214 is unconstitutional because it attempts to delegate legislative power to the petitioners, and confer upon them the absolute and arbitrary power to levy taxes and special assessments on the property of others. *The petitioners named in the statute are authorized, absolutely and arbitrarily, to determine whether the improvement is necessary and shall be made.* No discretion, exercise of judgment, or revisory or supervisory control is vested in the board of county commissioners, or any other tribunal or officer elected by or responsible to the people. When the petition is presented to the board of county commissioners demanding the improvement of a road, it is, in the language of the statute, 'made the duty of such county commissioners to cause the same to be improved.' The county commissioners have no discretion to refuse the improvement. Here an important power, namely, that of causing public improvements, and of levying general taxes on all of the people, in addition to special assessments on a portion of them, to pay for such improvements, is conferred directly upon a class of persons, many of whom may not be electors. The petitioners are authorized, absolutely and arbitrarily, to fix the boundaries of the taxing district; the nature, extent and cost of the improvement to be made; and no officer or tribunal of the people has any discretion in this respect. The boundaries of the taxing district are fixed by the 'terminal points mentioned in the petition.' 'The points between which the improvements are to be made,' and 'the kind of improvements,' are determined by the petition." (Page 158.)

The same Kansas statute was also held unconstitutional by the United States Circuit Court in *Parks v. Board of Commissioners of Wyandotte County*, 61 Fed., 436. Judge Williams said:

"Self-taxation, or taxation by officers chosen by or answerable to those directly interested in the district to be taxed, is inseparable from that protection of the

right of property that is either expressly or impliedly guaranteed by all written constitutions, under our system of government. Of all the powers of government the one most liable to abuse is the power of taxation. If placed in hands irresponsible to the people of the district to be taxed, its abuse is a mere question of time. If taxes may be forced on the people of a whole county, arbitrarily, by a few people signing a petition, it is plain that the people of the county, being the district to be taxed, have no voice in or control over the tax. There is no limit to the cost of these improvements, and the taxpayer is absolutely without means to check or control abuses that naturally follow arbitrary and irresponsible power over the property of others. The act is a plain violation of the principle of self-taxation, and a clear invasion of the right of property." (Page 438.)

It might have been, and doubtless was, claimed for this Kansas act that the petition of property-owners for improvement of the road was only a "fact" on the happening of which the statute itself became operative; but it was, like the action of the local legislatures of Michigan, more than a fact,—it was an exercise of discretion by the petitioners on legislative questions, viz., as Chief Justice Horton said, "the boundaries of the taxing district; the nature, extent and cost of the improvement to be made." (Page 158.)

In *Harward v. St. Clair, etc., Drainage Co.*, 51 Ill., 130, the court said, in condemning a delegation of taxing powers:

"The power of taxation is, of all the powers of government, the one most liable to abuse, even when exercised by the direct representatives of the people, and if committed to persons who may exercise it over others without reference to their consent, the certainty of its abuse would be simply a question of time. No person or class of persons can be safely entrusted with irre-

sponsible power over the property of others, and such a power is essentially despotic in its nature, and violative of all just principles of government. It matters not that, as in the present instance, it is to be professedly exercised for public uses, by expending for the public benefit the tax collected. If it be a tax, as in the present instance, to which the persons who are to pay it have never given their consent, and *imposed by persons acting under no responsibility of official position, and clothed with no authority, of any kind, by those whom they propose to tax*, it is, to the extent of such tax, misgovernment of the same character which our forefathers thought just cause of revolution. We are of opinion that we do no violence to the language of the clause in the constitution we have been considering, by holding that *it was designed to prevent such ill-advised legislation as the delegation of the taxing power to any person or persons other than the 'corporate authorities' of the municipality or district to be taxed*. These authorities are elected by the people to be taxed, or appointed in some mode to which the people have given their assent, and to them alone can this power be safely delegated." (Page 135.)

In *Central R. R. Co. v. State Board*, 49 N. J. L., 1, an act for taxation of railroads provided different taxes for "main stem" and for branches, and said that whenever there were several branch lines in one taxing district the assessors should designate one as main stem. (Page 10.) "This selection of a main stem," said the court, "is made at the will of this official body, uncontrolled by any legislative standard, and unguided by any peculiarity in the individuals of the class to be selected from, for they are in all respects alike." (P. 11.) Such power of selection was held a delegation of the power to tax, Chief Justice Beasley saying:

"But the present problem does not stand before us thus simply conditioned; the legislature has not itself declared which of these branches is to be selected as

main stem, but *has delegated the power to make such selection to the state board*. In other words, this body of officers is authorized to say which branch, out of three or more, shall be chosen as main stem, and shall thereby be exempted from a part of the tax to which the rest will be liable. *The legislature has not provided any standard by which the selection in question is to be made; everything in this matter being left to the unguided discretion of the designated officials*. It has been held in this court on several occasions that in the exercise of the taxing power *both the amount of the tax and the subjects to be subjected to it must be fixed by the legislature itself, or some standard must be provided by it whereby such matters may be plainly ascertained*. Neither of such things can be left at large, to be decided by the judgment of any set of officers." (P. 17.)

(g) It has been argued for appellee at different times that the amounts of local taxes raised through the state are themselves facts upon which the statute makes its own operation depend; that the statute says that when the *fact* is that local taxes and the state tax on others than the corporations taxed under Ch. 173 are on the average at a particular rate, then the taxes under Ch. 173 shall be at the same rate. Calling the result of the legislative decision on local taxes a "fact," however, does not affect the real working of the statute. Every statute or legislative ordinance is a fact in the same sense. It is an actuality. But so would be the rate of tax named by any body of men, to whom the legislature might commit in terms the power to fix the state tax rate. Their decision, when made, would be "a fact;" but, none the less, their act of decision would be the exercise of legislative power to determine the state tax. The distinction between real *facts*, whose executive ascertainment may be made the occasion of a law's

operation, as in *Field v. Clark* or in the *Tea Inspection case*, and acts which, of course, also are facts when done, is plain enough. The local legislators of Michigan, in voting local taxes and so largely determining the amount of appellant's tax, *do not seek to ascertain and announce a condition or thing existing apart from, and independently of, their own action; on the contrary, they act creatively*,—they use their legislative discretion to decide a question of public (and private) policy, and the result of their action is the only fact. Every legislative act is a fact, in the same sense of being an actuality, from the time when it is done; but not before that, and not independently of its doing.

(h) Judge Wanty, in his opinion in the court below, disposed of this claim of delegation as follows:

“The only question is, did the Legislature fix it, or is it fixed by the determination of the various legislative bodies of the different taxing districts into which the state is divided? ‘A rate ascertained as the result of that which is enacted may be regarded as authorized by law, as well as a rate declared in terms.’ *Morton, Bliss & Co. v. Comptroller General*, 4 S. C., 477. The local legislative bodies, in determining the amounts to be raised by taxation in their respective jurisdictions, and the assessing boards, in placing a valuation upon the property to be taxed, do not fix the rate, under this statute, to be paid by the complainants. They fix the rate to be paid by their several constituencies who appointed them, and to whom they are responsible; and the state legislature, which is a body representing the complainants, fixes the rate at which the complainants are taxed to be the average rate placed on the other property of the state, which is ascertained by a mathematical calculation. The rates at which the respective communities are taxed are facts in the production of which the discretion of the officers and the needs of the various communi-

ties for which they act is certainly an element, but after the facts are produced, the legislature may take them for its guide in fixing a rate, as it may take any other fact which moves its discretion. If the legislature were to convene each year after the assessments throughout the state had been levied, and should use the assessment rolls of the various assessing officers for the purpose of ascertaining the average rate levied upon other property upon which *ad valorem* taxes are assessed, and assess the property of complainants at that rate, there could be no constitutional objection to the tax; and yet the rate will be the same, and it would be ascertained in exactly the same way, except that a committee of the legislature would do the clerical work of making the mathematical calculation, which, under the statute we are considering, is done by the State Board of Assessors."

Michigan R. R. Tax Cases, 138 Fed., 223, on p. 235; Rec., 839.

Three positions seem, therefore, to have been taken by the trial judge; and a word of answer to each is proper.

In the first place, the judge quotes from *Morton, Bliss & Co. v. Comptroller General*, 4 S. C., 477, the statement,—"*A rate ascertained as the result of that which is enacted may be regarded as authorized by law, as well as a rate declared in terms.*" That is certainly true, in the absence of such constitutional provision as we have found in New York and Michigan, which requires tax laws to state the amount of tax directly, and not by reference. But, the trouble is that the average rate applied to appellant's property is *not* the result of what the state legislature has enacted. Who can determine the average-rate from the state statute, before the local legislatures

throughout the state have exercised their independent legislative powers? And how is the action of those local legislatures, in fixing the amount of taxes on which appellant's tax depends, controlled by any rule or principle furnished by the state legislature? The average-rate cannot be said to be the result of the action of the state legislature, unless the action of the local legislatures in prescribing the local taxes on which the average-rate chiefly depends can be said to be the result of the state enactment; and that is absurd.

In the second place, the trial judge said that "the rates at which the respective (local) communities are taxed are facts in the production of which the discretion of the officers and the needs of the various communities for which they act is certainly an element, but *after the facts are produced*, the legislature may take them for its guide in fixing a rate, as it may take any other fact which moves its discretion." Of this position it is enough to say, as already argued at sufficient length, that the tax-levying ordinances of the various local legislatures are not in a true sense facts, but *are legislative opinions and decisions on questions of policy*. In a sense, of course, a statute or any other legislative act is a fact; that is, it is an actual, existing thing, after the legislative act has been done. It is mere mental confusion, however, to forget, because both are actualities, the controlling difference between an independent legislative act (which levying taxes for the purposes of any community always is) and a fact, in the ordinary and true sense, which exists apart from legislative crea-



tion, and, therefore, may be executively or judicially determined. The distinction has already been discussed between a statute which makes its operation or application dependent upon real facts, to be ascertained by an executive or administrative official, and a statute which has no completeness before the independent and untrammelled action of other legislatures.

Finally, Judge Wanty says that it would be entirely allowable for the state legislature, *after* the various local legislatures in Michigan had levied their taxes, to adopt, for application to appellant's property, the rate resulting as an average from the various local levies. That is indisputable; but not this case. If in any year the state legislature ordered a committee, or anybody else, to compute and report the average of all tax levies in the state, and then ordered that particular average-rate to be applied to corporate property, it would, of course, itself have passed upon the propriety and justice of the particular rate adopted; but, under Act 173, the legislature orders applied to corporate property an average-rate whose amount the legislature cannot know, for it depends upon the independent legislative action of other bodies in the future. The difference may well be illustrated in this way: It is competent for the legislature to have a committee report to it what in the judgment of the committee is a proper rate of state tax, and then to adopt the rate recommended by the committee. On the other hand, it would be palpably a delegation of legislative power if the legislature were *in advance* to say that the rate of state

tax in a given year, or continuously from year to year, should be what its committee on taxation, or any other committee, should think proper. The difference between the two supposed cases is the same as the difference between the case Judge Wanty supposes and the actual case under Act 173.

(i) Thus far, the positive aspects of this delegation of taxing power to the local legislatures have been discussed, viz., that Ch. 173 allows those local legislatures to alter the average-rate by their own, independent legislative action; it is now desirable simply to recall its negative phases, as illustrated in the earlier parts of this brief, viz., that the state legislature itself has not considered and decided the two things which are essential parts of any law imposing state tax,—i. e., (1) how much revenue the state should have, and (2) what is a just apportionment of the burden of that revenue among its different contributors. (See Points I and IV, *supra*.)

(j) A word should be said about the cases of *Thomas v. Gay*, 169 U. S., 264.  
*Wagoner v. Evans*, 170 U. S., 588.

In these cases, statutes were sustained which allowed county authorities to tax for county purposes property situated within unorganized country, which was attached to the county for judicial purposes. Such decisions have no bearing upon the present case, for several reasons:

(1) They, of course, do not relate to the question whether the legislative power to tax has been delegated; they involve rather the questions whether, under the facts of the cases, the taxpayer was charged

by a non-representative legislature, or for the expenses of a government whose benefits he did not share.

(2) The pivotal facts were that the territory in which the taxed property was situated was not under any other local government than that of the county laying the taxes; and it was attached for judicial purposes to that county. Consequently, that territory became, as Justice Shiras said, "in effect a part of the county to which it was so attached." (Page 278.) The peace officers of the county; its courts; and, doubtless, the county officials, or many of them, acted for the attached territory. Justice Shiras said, too: "It is to be presumed that they (i. e., the people of the attached territory) have a *right to send their children to the schools* in the organized county." (Page 278.)

On the contrary, to use the situation of the North-Western Railway in the Upper Peninsula of Michigan again as an example, all of that railway is under local organization for the purposes of government; and it is impossible to say that it shares the benefits of local governments in the southern part of Michigan. The legislature fixes the area over which the benefits of a local government are supposed to spread when it defines the boundaries of that government's jurisdiction. A person put by the legislature under the government of one county, city, town, village or school district cannot be adjudged to share the benefits of the governments of other counties, cities, towns, villages and school districts.

(3) All persons and property in the unorganized

territory attached to the county, by the laws upheld in the two cited cases, were subjected alike to the county government and taxation. It cannot be said in the present case that the corporate property taxed under Act 173 is benefited by local governments within whose jurisdiction it does not exist, when no other property in Michigan—even though in the same place with the railroad—is held benefited by any local governments save those within whose jurisdictional boundaries it exists.

(4) Township taxes were *not* sustained, when levied upon property within the territory attached to the county. This was directly involved in *Wagoner v. Evans*. The court below had restrained collection of the township taxes (Page 589); both parties appealed; and this court reversed the court below as to county taxes, but affirmed as to township taxes. (Pages 592, 593.)

In Missouri, an average-rate law was sustained by the state court; but the statute was very different in scope and operation from that in hand, and the decision upon its validity will be found to have no argumentative value. Indeed, the points relied upon by appellant in the present litigation were hardly presented or considered. See,

*In re Apportionment of Taxes*, 78 Mo., 596.  
*State v. Mo. Pac. Ry. Co.*, 92 Mo., 137.

Of the former of these cases, these things should be noted:

(1) The question involved was purely one of apportionment of the tax that had been collected from

the railroad. The tax-paying railroad was not a party to the controversy.

(2) The matter was one of school taxes only. They were unquestionably for governmental purposes; and there was no feature in the law, such as Act 173 contains, whereby a railroad is charged because of the taxes for purely private enterprises and investments of localities in which no part of the railroad is situated.

(3) The rate of tax, indeed, under this Missouri statute was "the average rate of taxation levied for school purposes by the several local school boards or authorities of the several school districts *through which each railroad runs.*" (Page 598.) Act 173, however, averages all local taxes everywhere in the state, without reference to the situation of the railroad.

(4) No question whether the taxing power had been delegated or whether the Federal Constitution had in any way been violated was presented to the court.

(5) The Missouri court treated the county as a unit, with reference to school taxes; and expressly said that the question would be far different if the statute had sought to affect the taxpayer in one county with the school expenses of another county. The court used this language; "If the legislature had authorized one county to levy and collect taxes upon property located in another, it would be an analogous case to that of the City of Weston, above referred to" (p. 599); reported in 22 Mo., 387, and holding that persons outside of a municipality cannot be taxed for its benefit.

In the latter case, *State v. Mo. Pac. Ry. Co.*, a question was made, in a general way, under the Fourteenth Amendment; but apparently without indication of specific fault. The court's entire utterance on the subject is as follows:

"Wherein said Section 12 of the Act of 1873 is in conflict with the above constitutional provision has not been made clear to us. It is certainly within the power of the legislature to authorize the imposition of taxes for school purposes on the property of defendant; and considering the nature of its property, and the fact as stated in 78 Mo., 596, 'that the road-bed is chiefly valuable as an entirety,' that its aggregate value is made up because of its continuity, that the portion of a railroad in a county, when considered as disconnected with a continuous line, in most cases would be of little or no value; considering these things in connection with the further fact that the rolling stock of defendant, constituting a large and valuable part of its property, cannot be localized in any one county, it being from its very nature constantly changing from one county to-day and another to-morrow,—we cannot say that said Section 12 is violative of the Fourteenth Amendment, inasmuch as, under the construction we put upon it, the average rate to be applied to defendant's property must not exceed the limit prescribed in the constitution. In *Re Apportionment of Taxes*, 78 Mo., 596, it is held that said Section 12, so far as it authorized the apportionment of school taxes levied and collected according to the mode therein prescribed, was constitutional. While the constitutionality of the section as to the mode prescribed for levying school taxes was not directly passed upon conclusively, that it is not obnoxious to the constitution follows as a corollary from what was decided." (Pages 155-156.)

Here we have the court's entire pronouncement. Its value needs little comment. No definite point of unconstitutionality seems to have been advanced. The claim was general. The court decides no definite point,

but answers generally. If anything was definitely considered, it seems to have been the question whether it was wrong to put unequal rates upon railroad property and other property; and that, of course, was decided rightly, but is altogether different from the questions in the present litigation.

## VI.

*Act 173 deprives those taxed under it of opportunity to be heard concerning the amount of their tax before those who fix that amount, viz., (1) the local legislatures of the counties, cities, villages, towns and school-districts throughout Michigan, and (2) the local assessors who value the property taxed ad valorem, throughout the state, under other laws than Act 173.*

The two branches of this question of hearing require separate treatment:

1. *As to hearing before the local legislatures.* It may be said that this aspect of the matter reduces to Point V, *ante*,—that the power of fixing the rate has been delegated to the local legislatures; for, if that power has not been delegated, and the rate is fixed by the state legislature itself, the persons taxed upon Act 173 had the opportunity to be heard about the rate by appearing before the state legislature when it was considering the enactment of the statute. Such a position, however, rests upon an artificial, rather than a practical and real, view of the situation; and even technically it must be abandoned if the power of fixing the rate from year to year has been delegated to the local legislatures.

The very unreality of the opportunity of those taxed under Act 173 to appear and contest before the state legislature the amount of tax to be imposed upon them is, in itself, a further and forcible argument to show that the power of fixing the "average-rate" has been delegated. How could any corporation taxed under Act 173 have argued before the state legislature, in the course of its consideration of the act, that the "average-rate" would be too high or too low, either for the state's needs or for just treatment of the corporate tax-payer in comparison with his neighbor in the same communities? As already argued, nobody (whether the legislature or the taxpayer) could tell what the rate in any year would be, because nobody could tell what local taxes Detroit, Kalamazoo, Marquette or any other municipality of Michigan would levy; and on the action of those municipalities would depend, not only what revenue the state would get, but also whether a railroad would pay a higher or a lower rate than its neighbors. It would have been nothing but futile for the railroad to argue before the legislature that Act 173 would tax it too much for the state's needs, or too much in comparison with others in the same places; for to any such argument it would have been fair reply,—“How do you know what the rate will be?”

The rule that a tax-payer is constitutionally entitled to a hearing on the amount of his tax includes the right of hearing on that point before the legislature. Such privilege is part of the general right of appearance before, or petition to, the legislature; which is part of the law of the land.

Cooley on Constitutional Limitations (7th Ed.), 497, 498.

2 Story on the Constitution, Sec. 1894.



This Court has declared:

"The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in reference to public affairs and to petition for redress of grievances."

*U. S. v. Cruikshank*, 92 U. S., 542, on p. 552.

The Constitution of Michigan itself re-enforces the right; providing that,

"The people have the right peaceably to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for the redress of grievances."

Michigan Constitution, Art. XVIII, Sec. 10.

Of which provision, the Supreme Court of the state says:

"This section gives, and was intended to give, to the people the *right to present their views to the legislature on any subject which is of legislative cognizance.*"

*State Tax Law Cases*, 54 Mich., 350, 382.

And, as already ruled by this Court, a tax-payer has the constitutional right to be heard before a Board of Commissioners, empowered to define a taxing-district on the *legislative* question what boundaries shall be given the district.

*Fallbrook Irrigation District v. Bradley*, 164 U. S., 112; 170, 174, 175.

This Court said:

"In the act under consideration, however, the establishment of its boundaries and the purposes for which the district is created, if it be finally organized by reason of the approving vote of the people, will almost necessarily be followed by and result in an assessment upon all the lands included within the boundaries of the

district. The legislature thus in substance provides for the creation not alone of a public corporation, but of a taxing district whose boundaries are fixed, not by the legislature, but, after a hearing, by the board of supervisors, subject to the final approval by the people in an election called for that purpose. It has been held in this court that the legislature has power to fix such a district for itself without any hearing as to benefits, for the purpose of assessing upon the lands within the district the cost of a local, public improvement. The legislature, when it fixes the district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right to any other or further hearing upon that question. The right which he thereafter has is to a hearing upon the question of what is termed the apportionment of the tax, *i. e.*, the amount of the tax which he is to pay. *Paulsen v. Portland*, 149 U. S., 30, 41. But when as in this case the determination of the question of what lands shall be included in the district is only to be decided after a decision as to what lands described in the petition will be benefited, and the decision of that question is submitted to some tribunal (the board of supervisors in this case), the parties whose lands are thus included in the petition are entitled to a hearing upon the question of benefits, and to have the lands excluded if the judgment of the board be against their being benefited. Unless the legislature decide the question of benefits itself, the landowner has the right to be heard upon that question before his property can be taken. This, in substance, was determined by the decisions of this court in *Spencer v. Merchant*, 125 U. S., 345, 356, and *Walston v. Nevin*, 128 U. S., 578. Such a hearing upon notice is duly provided for in the act." (pp. 174, 175.)

*French v. Barber Asphalt Paving Co.*, 181 U. S., 324; 339-341.

The reasons for the distinction, in respect of notice and hearing, between action by the legislature itself

and action of a special board, in fixing the limits of the taxing district, are doubtless that everybody is bound to take notice of the legislature's sessions, and at its sessions everybody has the right to be heard through petition or otherwise.

Patently, the persons taxed under Act 173 have no right to appear before the county, town, village and school district boards, and the city councils, of the communities in which they have no property, and be heard on the subject of the local taxes to be raised. They are not members of those communities; they have no interest in the question which alone the local legislature does, or can, decide, viz., what local needs and policies call for; and the statutes of Michigan give them no right of such appearance and hearing.

2. *The necessity that a corporation taxed under Act 173 be given the right of hearing before the assessors throughout the state, on the subject of the value and proper assessment of that property, is no less clear under the "average-rate" plan; and this necessity is plainly independent of the question whether the power of fixing the rate of tax has been delegated to the local legislatures.*

The assessments made on property generally in the state determine directly, and equally with the amount of taxes paid on that property, the average-rate and consequently the amount of tax paid by appellant. *The taxes are the dividend; the assessments are the divisor; and the quotient is the average-rate.*

The action of the assessors, in fixing the value of property generally, is executive work. Its nature and

its consequence to appellant are the same as in the case of ordinary taxation, when the legislative body enacts that a fixed amount (as distinguished from a fixed rate) of tax be collected on the value of property in the taxed district. If the rate of tax is named by the legislature, the only assessment in which any particular taxpayer is interested is that of his own property; but when the tax is ordered in a fixed amount (*e. g.*, \$1,000,000), each taxpayer is interested in all the assessments, because the aggregate of all assessments determines the rate applied on each assessment.

The right of a taxpayer to be heard on the assessment of his property is fully established.

Cooley on Taxation (3d Ed.), 626.

*Hagar v. Reclamation District*, 111 U. S., 701, 710.

*Winona & St. Peter Land Co. v. Minnesota*, 159 U. S., 526, 535.

The reasons for this right are: (1) On the assessment depends his tax, and (2) the assessment is a decision by executive officers on a question of fact which the action of the legislature, in fixing the amount or rate of tax, has not determined. The assessment, therefore, is an act on which his tax depends, about which the taxpayer has had no previous opportunity for hearing, and about which no decision has been made for the taxpayer by a representative legislature.

All these reasons apply in support of the claim of those taxed under Act. 173 that they should have a right of hearing before all the assessors of Michigan. Those assessments determine the tax; they are executive acts, —decisions by executive officers of questions of fact

(i. e., the value of different properties)—and the legislature itself, of course, has not passed on the assessments.

Under ordinary *ad valorem* tax laws, any taxpayer has the constitutional right (if the *rate* of tax has not been named by the legislature, but is left to result from division of the amount of tax, ordered by the legislature, by the total assessment) to be heard on assessments generally.

*Cooper v. Board of Works*, 108 Eng. C. L. R., 181. (Especially language of Wells, J., and Byles, J., as quoted in 13 Fed. Rep., on page 765.)

*Dundee Mortgage Co. v. Charlton*, 32 Fed., 192.

*State v. Randolph*, 25 Dutcher (N. J.), 427, 431.

*State v. Dodge County*, 20 Neb., 595, 600.

*State v. Edwards*, 26 Neb., 705.

The cases holding that a taxpayer may attack his tax in court because the property of others is fraudulently assessed too low, or is fraudulently omitted from assessment, recognize and are founded on the interest of each taxpayer in all the assessments that fix the rate of tax. The restriction of his privilege of judicial attack to cases of fraud on the part of the assessors can exist only because the taxpayer may be heard before the assessor, and so is bound by his decision, if honest.

Indeed, a right of hearing before the proper body seems necessary concerning any act whose effect is to take property.

*Alexander v. Gordon*, 101 Fed., 91; 96-98.

*In re Rosser*, 101 Fed., 562.

*Lamb v. Powder River Live Stock Co.*, 132 Fed., 434.

And, especially, it is to be borne in mind that *the work of the assessors, throughout the state, has an importance in its effect upon appellant's tax, that is both far greater than, and different from, the effect of the work of assessment in ordinary ad valorem taxation.* Under Act 173, the action of the local assessors everywhere fixes the amount of state tax paid by appellant *without any check or restraint thereon by action of the state legislature.*

The legislature neither fixes the absolute amount of tax to be raised for the state in any year, nor fixes the rate of tax for state purposes. *Both are left to depend, without legislative control, on the assessments.* In ordinary *ad valorem* taxation, the legislature itself fixes the absolute tax or the rate of tax. In the former case, the assessments determine only the distribution of the tax among its several contributors, and do not at all affect the amount of taxes raised by the state. If assessments are low, the rate becomes high; if they are high, the rate becomes low; the amount of the tax remains invariable, as the legislature fixed it. In the latter case (where the legislature fixes the rate of tax), it is true that the assessments influence the amount of the state's revenue, *but only as one factor which operates upon the amount of the state's revenue in a way fixed by the legislature itself, viz., by application of the rate which the legislature has itself determined.* Under Act 173, on the contrary, *no element is contributed by the legislature to control the tax.* The things on which it depends are (1) the aggregate *ad valorem* taxes paid by property generally in the state, which are fixed by local communities and their officials, and which may go to any amount they determine, and (2) the as-

assessments. *The action of local legislators and of assessors is permitted to charge appellant without the slightest check.*

And this feature of the statute becomes of peculiar import when we consider that *all but appellants gain by the general habit of low assessments; and gain proportionately to the amount of the under-assessments; appellants under the ingenious devices of Act 173 are hurt by that habit, and proportionately to the amount of the general under-assessments.* It is not too much to say (for it has a warrant in the statute's own physiognomy) that this practical feature was a large motive to the adoption of the statute.

If a tax is imposed upon general property in a given amount, either by the state legislature or by a local legislature, low assessments and consequent high rates do not hurt the payers of that tax, so long as assessments are relatively equal; but indirectly such low assessments benefit the general taxpayers because appellants are compelled in consequence of such low general assessments to pay more tax to the state, with the result that the state will need to raise less state tax, *pro tanto*, from others than appellants. If the tax laid upon general property be one for which the rate is fixed by the legislature, the taxpayers generally profit still more from low assessments; because then they pay less tax directly under that rate, and beside they get the same indirect benefit as in the other supposed case through increase, in consequence of the low assessments, of the portion of state taxes which the corporations must pay under Act 173.

SECOND. UPON THE QUESTION WHETHER ACT 173 DENIES TO THOSE TAXED UNDER IT THE "EQUAL PROTECTION OF THE LAWS," IT IS SUBMITTED:

## I.

The phrase "equal protection of the laws" remains, like "due process of law," undefined in any complete way. Perhaps it is susceptible of easier general definition; but the courts have followed in reference to it, as concerning "due process of law," the wiser and judicially natural course of applying the phrase to each case on its own facts.

Many illuminating and fertile descriptions of the phrase have been given. Some of the leading ones are here mentioned.

Justice Matthews said:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

*Yick Wo v. Hopkins*, 118 U. S., 356, on page 369.

Justice Field said that the Fourteenth Amendment "undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like cir-



cumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in

its application, if within the sphere of its operation it affects all persons similarly situated, is not within the amendment."

*Barbier v. Connolly*, 113 U. S., 27, on pages 31 and 32.

The same great judge said, in the celebrated California Tax Cases, these things:

"The concluding clause of its first section was designed to cover all cases of possible discriminating and partial legislation against any class, in ordaining that no state shall deny to any person within its jurisdiction the equal protection of the laws. Equality of protection is thus made the constitutional right of every person; and this equality of protection implies not only that the same legal remedies shall be afforded to him for the prevention or redress of wrongs and the enforcement of rights, but also that he shall be subjected to no greater burdens or charges than such as are equally imposed upon all others under like circumstances. No one can, therefore, be arbitrarily taxed upon his property at a different rate from that imposed upon similar property of others, similarly situated, and thus made to bear an unequal share of the public burdens."

*County of San Mateo v. Southern Pac. Ry. Co.*, 13 Fed., 145, on page 150.

Again:

"The fourteenth amendment to the constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the state which can touch the individual or his property, including among them that of taxation. Whatever the state may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws. And by equal protection of the laws is meant equal security under them to every one on similar terms,—in his life, his liberty, his property, and in the

pursuit of happiness. It not only implies the right of each to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances. Unequal exactions in every form, or under any pretense, are absolutely forbidden; and of course unequal taxation, for it is in that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where, for instance, one may be taxed at 1 per cent. on the value of his property another at 2 or 5 per cent., or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property."

*Railroad Tax Cases*, 13 Fed., 722, on page 733.

Justice Bradley said:

"The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and *reasonable ways*. It may, if it chooses, exempt *certain* classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different *specific* taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, *so*

long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt."

*Bell's Gap R. R. Co. v. Pennsylvania*, 134 U. S., 232, on page 237.

These declarations of the most eminent judges, which, too, have been recognized at all times in this court as sound, indicate a few central things with great clearness; and among these things, I think, may be named:

1. Persons are within the equal protection of the laws as to taxation.
2. While the legislature in imposing taxes may exercise a wide discretion, in subjecting property to different forms and amounts of taxation, *that discretion must rest upon a reasonable basis and the dis-*

criminations made by the legislature in taxation of different sorts of property *must not be arbitrary, in the sense of resting upon no fact that affords a just ground for such course.*

3. No more in taxation than in other fields of legislation are any persons to be deprived of those things that are most fundamental in our government, and *are always essential to any real protection of the government's subjects*, such as the decision of legislative questions by a popular and representative legislature; the right of appeal to the courts on questions of judicial character; opportunity for hearing before either the legislature or the court that determines the subject's rights; and the avoidance in all fundamental ways of such things as, in Justice Bradley's words, "are of an unusual character, unknown to the practice of our governments."

It has often been said by the courts, and is of course true, that no tax law can operate, in its actual application to the complicated facts of life, with absolute or mathematical equality. It is enough that the law fairly and honestly tends to a real equality, though its application may somewhat fall short of that object. *But it will not do for a tax law directly and necessarily to tend to inequality—at least of a kind that is unmistakably unreasonable and unjust.* That is no less thoroughly established than the extensive discretion of the legislature, as Justice Bradley also said, "within reasonable limits and general usage."

Justice Brewer declares:

"It has been more than once said judicially that one of the principles upon which this government was founded is that of equality of right. It is emphasized

in that clause of the Fourteenth Amendment which prohibits any State to deny to any individual the equal protection of the laws. That constitutional provision does not, it is true, invalidate legislation on the mere ground of inequality in actual result. Tax laws, for instance, in their nature are and must be general in scope, and it may often happen that in their practical application they touch one person unequally from another. *But that inequality is something which it is impossible to foresee and guard against, and therefore such resultant inequality in the operation of a law does not defeat its validity.*"

*Cotting v. Kansas City Stock Yards Co.*, 183 U. S., 79, on page 110.

"Equality in right, in protection and in burden is the thought which runs through the life of this Nation and its constitutional enactments from the Declaration of Independence to the present hour. Of course, absolute equality is not attainable, and the fact that a law, whether tax law or other, works inequality in its actual operation does not prove its unconstitutionality. But when a tax directly, necessarily and intentionally creates an inequality of burden, it then becomes imperative to inquire whether this inequality thus intentionally created can find any constitutional justification."

*Magoun v. Illinois Trust & Savings Bank*, 170 U. S., 283, on page 301.

And of this Justice Field likewise spoke:

"Unequal taxation, *so far as it can be prevented*, is therefore, with other unequal burdens, prohibited by the amendment. There undoubtedly are and always will be more or less inequalities in the operation of all general legislation arising from the different conditions of persons, from their means, business or position in life, against which no foresight can guard. *But this is a very different thing, both in purpose or effect, from a carefully devised scheme to produce such in-*

*equality; or a scheme, if not so devised, necessarily producing that result.* Absolute equality may not be attainable; but gross and designed departures from it will necessarily bring the legislation authorizing it within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position that unequal taxation is not within the scope of its prohibitory clause would give to it a singular meaning. It is a matter of history that unequal and discriminating taxation, leveled against special classes, has been the fruitful means of oppressions and the cause of more commotions and disturbances in society, of insurrections and revolutions than any other cause in the world."

*County of Santa Clara v. Southern Pacific R. Co.*, 18 Fed., 385, on page 399.

In another place, Judge Field said:

"Absolute equality and uniformity may not be attainable in practice, but an approximation to them is possible, and any plain departure from the rule will defeat the tax."

*Railroad Tax Cases*, 13 Fed., 722, on page 734.

The power of the legislature, in establishing different methods of taxation for different persons and property, is that of classification, and such power is recognized on all hands; but the extent of the power depends upon the meaning of classification. The right to classify is not the right to act arbitrarily, or to deprive persons of the most fundamental sorts of protection accorded to persons generally. *Classification means only the division of persons or properties into different classes on some basis or principle that, from its own nature and from the nature of the persons or properties classified, affords a reasonable and just*

ground for the different treatment of the different classes. This likewise is amply established in the decisions.

Justice Brewer said:

"But it is said that it is not within the scope of the Fourteenth Amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily, and without any such basis."

*Gulf, Colorado & Santa Fe Ry. v. Ellis*, 165 U. S., 150, on page 155.

Again,

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court, in *Yick Wo v. Hopkins*, 118 U. S., 356, 369: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary pow-



er.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

(*Id.*, page 159.)

After citing numerous authorities illustrating unreasonable classifications, Justice Brewer concluded:

"It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

(*Id.*, page 165.)

A few other statements of this plain idea may be permitted:

"The basis of classification must be natural, and not arbitrary."

Judge Baxter, in *De Brell v. Morrissey's Heirs*, 15 S. W. Rep., 87, on page 95.

"The section of the code under consideration (1715) prescribes a regulation of a peculiar and discriminative character in reference to certain appeals from justices of the peace. It is not general in its provisions or applicable to all persons, but is confined to such as own or control railroads only; and it varies from the general law of the land by requiring the unsuccessful appellant, in this particular class of cases, to pay an attorney's tax fee not to exceed twenty dollars. A law which would require all farmers who raise cotton to pay such a fee in cases where cotton was the subject-matter of litigation and the owners of this staple were parties to the suit would be so discriminating in its nature as to appear manifestly unconstitutional; and one which should confine the tax alone to physicians or merchants or ministers of the gospel would be glaring in its obnoxious repugnancy to those cardinal principles of free government which are found incorporated, perhaps, in the bill of rights of every state constitution of the various commonwealths of the American Government."

Clopton, J., in *South & North Alabama R. R. v Morris*, 65 Ala., 193, 199, *et seq.*

"But classification for legislative purposes must have some reasonable basis on which to stand. It must be evident that differences, which would serve for a classification for some purposes, furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations. Thus, the legislature may fix the age at which persons may be deemed competent to contract for themselves, but no one will claim that competency to contract may be made to depend upon nature or color of the hair. Such a classification for such a purpose would be arbitrary, and a piece of legislative despotism, and therefore not the law of the land."

*State v. Loomis*, 115 Mo., 307, on page 314.

For other cases illustrative of the proposition—that classification must be guided by a principle that reasonably leads to different treatments of the established classes *in that particular respect in which they are differently treated*, see—

*Wilder v. C. & W. M. Ry. Co.*, 70 Mich., 382, 384.

*Lafferty v. C. & W. M. Ry. Co.*, 71 Mich., 35.

*Park v. Free Press Co.*, 72 Mich., 560, 566, 567.

*Grand Rapids Chair Co. v. Runnells*, 77 Mich., 104.

*San Antonio, etc., Ry. Co. v. Wilson*, 19 S. W., 910 (Tex.).

*Millett v. People*, 117 Ill., 294.

*Frorer v. People*, 141 Ill., 171.

*Eden v. People*, 161 Ill., 296.

*City of Janesville v. Carpenter*, 77 Wis., 288, 302.

*Durkee v. Janesville*, 28 Wis., 464.

*State v. Goodwill*, 33 W. Va., 179.

*State v. F. C. Coal & Coke Co.*, 33 W. Va., 188.

*Picrson v. City of Portland*, 69 Me., 278, 281.

*State v. Hame*, 61 Kas., 146, 152, 153, 154.

This fundamental requisite of classification, viz. that it must have an underlying principle, which grows out of the real nature of things—and not merely out of an arbitrary legislative desire—and which leads reasonably to the different treatments that the legislature prescribes for the different classes, constitutes a particular aspect of, and affords one of the best tests

for applying, the rule of equal protection under the laws which the Fourteenth Amendment contains.

This Court has even gone to the length of declaring that the equality of all before the law which the Fourteenth Amendment requires is inherent in a republican form of government. Chief Justice Waite spoke for the court when he said :

“The Fourteenth Amendment prohibits a state from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it and which we have just considered, add anything to the rights which one citizen has under the constitution against another. *The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the states; and it still remains there. The only obligation resting upon the United States is to see that the states do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guarantee.*”

*U. S. v. Cruikshank*, 92 U. S., 542, on page 554.

While the questions presented in the present suits have none of them been passed on by the state courts, it illustrates and re-enforces the independent authority and the direct obligation of the federal government to see that things guaranteed by the Fourteenth Amendment are not taken away, that the federal courts are not bound, in considering questions under the Fourteenth Amendment to accept the view of the nature or

effect of a state statute which may have been taken by the state courts.

*Yick Wo v. Hopkins*, 118 U. S., 356, 366.

*A., T. & S. F. R. R. Co. v. Matthews*, 174 U. S., 96, 100.

## II.

Undoubtedly the "equal protection of the laws" has a wider scope than "due process of law". A thing that is so lacking in the more fundamental elements of justice as not to be due process of law can hardly be believed ever to give the equal protection of the laws; unless, indeed, in the single instance where the due process of law is denied to all in the state. On the other hand, the equal protection of the laws may often be denied to some persons, through refusal to them of some safeguard or right that is accorded to others and is of sufficient importance to make its denial to some, while it is granted to others, an unreasonable and hostile discrimination, even though that thing is not indispensable to due process.

As was said by Justice Field in the California tax litigation:—

"With the adoption of the amendment the power of the states to oppress any one, under any pretense or in any form, was forever ended; and henceforth all persons within their jurisdiction could claim equal protection under the laws. And by equal protection is meant equal security to every one in his private rights—in his right to life, to liberty, to property and to the pursuit of happiness. It implies not only that the means which the laws afford for such security shall be equally accessible to him, but that no one shall be

subject to any greater burdens or charges than such as are imposed upon all others under like circumstances. This protection attends every one everywhere, whatever be his position in society or his associations with others, either for profit, improvement or pleasure. It does not leave him because of any social or official position which he may hold, nor because he may belong to a political body or to a religious society or be a member of a commercial, manufacturing or transportation company. It is the shield which the arm of our blessed government holds at all times over every one, man, woman and child, in all its broad domain, wherever they may go and in whatever relations they may be placed. No state—such is the sovereign command of the whole people of the United States—no state shall touch the life, the liberty or the property of any person, however humble his lot or exalted his station, without due process of law; and no state *even with due process of law* shall deny to any one within its jurisdiction the equal protection of the laws.”

*County of Santa Clara v. Southern Pacific R. Co.*, 18 Fed., 385, on page 398.

If the equal protection of the laws be not a guarantee of other and wider nature than due process of law, there was no occasion for inserting both in the constitution; and it is obvious, therefore, that the former is not to be reduced in meaning to the latter.

The arguments made in the former parts of this brief, devoted to due process, naturally bear again concerning equal protection; but it will be neither necessary nor proper to repeat them. Points III-VI following, if independently presented, would involve most all that is said under Points I-VI about due process. We ask the Court's reapplication here of what has preceded; in remembrance always of the fundamental con-

sideration that, whether or not the many novel and unjust features of the statute's operation make it fall below due process, they deny equal protection of the laws if they deprive appellants of the full, genuine benefit of protective principles which, in England and America, have always been recognized as of the largest practical importance.

### III.

*The taxes (state or local) of all persons in Michigan but appellants and the other corporations taxed under Act 173 are voted with reference to, and in such amount as is deemed necessary to meet, the needs of the community that pays the taxes, and is to receive them; but appellants' taxes are of an amount fixed, as the average-rate idea openly confesses, with reference to the expenses, both public and private, of other governments than the state, viz., all the counties, cities, villages, towns and school districts in Michigan, notwithstanding the fact that appellants have property in but a part of them.*

Most briefly, it may be said again that when the legislature orders a certain amount of tax—however large—*without stating* that it is to depend upon, or bear any proportion to, anything else (or even stating what has determined the legislative decision)—there is, of course, no possibility of a court's saying that the legislature has considered anything that it should not consider; but when, as in this act, the tax which the legislature orders is made *explicitly* to depend upon, and be controlled by, the taxes of other governments, *then* a court has no option but to say that the amount

of the tax is ordered—not because the legislature considers that the state's needs are proportionate to the needs of the other governments, whose local taxes are taken as a determinant—but *because the legislature seeks to equalize the burdens of different classes of taxpayers for different governments, and for different private and local enterprises*,—making appellants pay more state tax than others if, and proportionately as, those others pay more local taxes, and, on the other hand, making appellants pay less state tax if, and proportionately as, others pay less local taxes; without any reference to the question whether appellants share the benefit of the local taxes or not.

Again the questions are pertinent: *Why not as well permit appellants' taxes to be made of such amount as will meet the needs of any other government, outside of Michigan; for example, Ohio or Wisconsin? And, especially, why not as well permit appellants' taxes to be made of such amount as will equal the expenditures of private corporations, such as gas companies, water companies, street railway companies, etc., doing a business of a quasi-public sort in Michigan, and having property that is no more private than investments of the same kind by municipalities? Can the determination of taxes on such a principle in the case only of corporations taxed under Act 173 be held to afford the equal protection of the laws?*



## IV.

Further, concerning the question of just distribution of the burden of the state's support, among those who are subject to it, when the legislature, in any ordinary taxing act, orders a certain amount or rate of tax to be paid by one class of its citizens,—without saying more—there is no possibility of a court's saying that the legislature has adjusted relative taxes in any other purpose than to make the different classes of taxpayers contribute in ratios that the legislature deems a just apportionment of the burdens of the government which lays the tax—or (at most) of the governments, state and local, whose benefits the taxpayer shares; but such a view of Act 173 is impossible, because it *palpably and directly* orders that there shall be a parity of tax, on a given amount of property, between what appellants pay the state and what others pay both to the state and their respective local governments, including all those local governments of Michigan whose benefits appellants do not share. Therefore, the unavoidable question comes: Is it "*equal protection*" of the laws to make appellants, alone of all the persons and property in Michigan, pay taxes that result—not from what the legislature thinks just between persons and property in the same places and under the same governments,—but from a relation of parity with the taxes on persons and property in other places, whose local governments appellants do not share?

It will be remembered that this plan has two striking consequences:

- (1) The rate on railroad property in one year may

well be more than the rate on other property in the same places, and the next year the exact reverse be true; it thus clearly appearing that *the legislature utterly disregards, and makes no attempt to prescribe, the relation between the taxes of appellants and of others in the same places and under the same governments.* Indeed, in *the same year* one railroad is taxed on its property less than is paid on other property in the same places; while the reverse is true of another railroad. It all depends on the relation of local taxes in different parts of the state.

(2) Appellants are really taxed *for the relief* of others from a part of the expense (public and private) of their respective local governments, though appellants have no property under the jurisdiction of those governments. This has already been argued at length. (See Points II, III and IV, under due process.) *Why not as well tax appellants directly for the support of local governments where they have no property whatever? And, why not as well tax railroads for the relief of purely private companies operating water works, gas works, street railways, etc., as tax them for the relief of the inhabitants of municipalities (in which appellants have no property) from the expense of like private investments?*

When corporations taxed under Act 173 are the only persons in Michigan taxed after such principles and with such results as are imbedded in the plan of equalizing the taxes of persons living under different governments, are appellants given the equal protection of the laws?

Attention may be given here to the New Jersey

Railroad Tax law, which was first held unconstitutional by the Supreme Court of New Jersey (*Central Railroad Company v. State Board of Assessors*, 48 N. J. Law, 1), but was afterward held valid by the Court of Errors and Appeals (48 N. J. Laws, 146). The provisions of this statute are given in the former opinion by Chief Justice Beasley and in the latter by Chancellor Runyon. Without repeating here the full details of the statute, these significant things should be noticed:

(1) A "main stem" one hundred feet wide, including main track, was valued by itself, and its assessment with that of personal property and of the company's franchise was subjected to a tax, *fixed by the legislature itself*, of one-half of one per cent. for state purposes.

(2) The railroad real estate, outside of the "main stem" strip, was valued by itself and its assessment *subjected to the local rates of tax in the places where it was situated*.

(3) It was carefully provided by the statute that, in the language of Chancellor Runyon:

"If the amount of the state tax and local rate, as limited in the act, combined, exceed the amount which the company would have to pay if assessed at and required to pay full local rates alone, then they (*i. e.*, the state board of assessors) shall reduce the whole tax which the company would be required to pay to the last mentioned rate; and, in order to ascertain that amount (but for no other purpose), they may apportion the value of the franchise among the local taxing districts." (p. 272.)

(4) The tax paid at local rates upon the real estate

outside of "main stem" was allotted to the local communities where that real estate was situated.

It thus appears that this New Jersey statute had no average-rate feature, but, on the contrary, applied to the "main stem" a tax of one-half of one per cent. only, which was fixed by the legislature itself; and that, instead of making it possible to tax any part of the railroad at a higher rate than if it were taxed under local rates like other property, the statute carefully provided that even the stated rate of one-half of one per cent., fixed by the legislature, should be reduced, if necessary to bring about the result that the railroad property should pay no more tax than if taxed in ordinary fashion. This statute is so far from affording any precedent for the Michigan statute, that, on the contrary, it emphasizes that a fair tax law should be quite the opposite of Act 173.

Nor is it necessary to go to the length of Act 173, or resort to its curious devices, in order to accomplish the purpose, if the legislature should deem that expedient, of having all the railroad tax go into the state treasury. That result could be accomplished most easily, on lines of procedure already followed in the Illinois and Indiana railroad tax laws; by a process such as this— (a) assess the railroad as a whole; (b) apply the state rate of tax to this whole assessment and pay the result into the state treasury; (c) apportion the aggregate assessment to the local communities on track mileage or other legitimate basis for estimating the parts of the railroad's value in the different communities, as is done in the Illinois and Indiana laws; (d) apply to the apportioned assess-

ments the local rates in the respective communities; (e) pay the result of application of local rates to the locally apportioned assessments into the state treasury. Of course, too, the entire railroad tax could be carried directly and easily into the state treasury by a specific tax, such as Michigan so long had before the enactment of Act 173.

## V.

*All persons in Michigan except the corporations taxed under Act 173 are given the benefit and protection of having the amount of their taxes fixed by a legislature whose members represent, and are responsible to, the community that is taxed; but that fundamental protection is denied to appellants.*

1. I assume here, of course, that it has been shown that the amount of taxes levied upon corporations under Act 173 is not fixed by the state legislature, but results from an independent discretion of the various local legislatures throughout Michigan who largely determine the aggregate of taxes used in determining the average-rate of tax applied to appellant's property. The previous discussion of that point need not be repeated.

What remains to be said under the present head is to show that, even if the determination of the amount of appellants' taxes otherwise than by a representative legislature is due process of law, it assuredly is not equal protection of the laws. The one great and fundamental security against oppressive taxation is that the legislature which determines the tax be

responsible to the community that pays the tax. This idea is central in the American system. The greatest judges have invariably recognized it. I will not repeat here the quotations made in the first part of this brief on the subject, but I give again here the leading references.

*Ch. J. Marshall, in McCulloch v. Maryland*, 4 Wheaton, 427.

*Providence Bank v. Billings*, 4 Peters, 514, 563.

Judge Cooley, in *Board of Park Commissioners v. Detroit*, 28 Mich., 227, on pages 244, 245 and 247.

Ch. J. Campbell in *S. C.*, 28 Mich., 228, on pages 249 and 250.

*People v. Hurlbut*, 24 Mich., 44; Judge Christianity on pages 64-66; Ch. J. Campbell on page 89; Judge Cooley on pages 97-110.

Still other references will be found in the first part of the brief. They all emphasize, if that be necessary, the absolute importance of representative legislation in imposing taxes. When all persons in Michigan but the corporations taxed under Act 173 have the amount of their taxes fixed by a representative legislature, can it be equal protection of the laws to take that fundamental safeguard away from the appellants?

2. The descriptions of what the equal protection of the laws requires under the Fourteenth Amendment, given above, nearly all state, and none of them deny, that it includes the right of resort to the courts on equal terms concerning all judicial questions; and it

has been directly decided that this privilege is essential even to due process of law.

*Chicago, Milwaukee & St. Paul Ry. Co. v. Minnesota*, 134 U. S., 418, 456, 457.

Can the right of the people to tax themselves, through their representatives in a legislature chosen by the community that pays the tax, be of less moment to the persons who dwell or have property in a state than the opportunity to resort to the courts for determination and assertion of their civil rights?

3. Viewing the matter as one of classification, how does it stand?

The property of railroad corporations and of other corporations enumerated in Act 173 is separated as a class by itself from the property of all other persons in Michigan for the purpose, or at least with the result, of denying to appellants the protection of having their taxes fixed in amount by a representative legislature; while, on the other hand, that protection is accorded to all others. Is there anything in the nature of the business or the property of railroads and of the other corporations enumerated in Act 173 that affords a reasonable basis for treating them differently from all others in Michigan in respect of this fundamental matter of representative taxation? Let it be remembered, as the citations already given show and as common sense and common fairness make plain, that classification for the purpose of different kinds of treatment must rest upon a principle that reasonably justifies such different treatment as grows out of the classification.

4. By any of the tests of "reasonable limits," or "general usage," or being "unknown to the practice of our governments," suggested by Justice Bradley's language in the case of *Bell's Gap R. R. v. Pennsylvania*, 134 U. S., 232, 237, the denial by Act 173 to appellants of the protection of representative taxation, which is accorded to all others in Michigan, is quite insupportable.

5. The denial of government in legislative matters by a representative legislature is in reality taking a part of the persons and property in the state that are under the protection of the Federal Constitution out of the operation, and putting them beyond the benefit, of the most fundamental idea of free government.

## VI.

*The protection of a hearing upon the amount of their tax, which is given to all others in Michigan, is denied to appellants by Act 173.*

How the average-rate plan deprives appellants of hearing,—either before the state legislature, in any effective way, because when it passed Act 173 nobody could tell anything about the rate; or before the local legislatures, who really make the rate, through their independent levies of local taxes; or before the assessors of general property, whose executive action, in a peculiar and unchecked way, likewise determines the rate—has already been sufficiently discussed. (Point VI, under due process.) The fact that all others have the privilege of hearing, both before the legislature and before the assessors who determine their taxes,



is undeniable. The vast importance of the difference of treatment is sufficiently illustrated by the care with which the Michigan Constitution itself provides for legislative hearing. (*Art. XVIII, Sec. 10; State Tax Law Cases*, 54 Mich., 350, 382), and by this court's own decisions already cited.

## VII.

*An elaborate system of equalization of assessments is provided by the Michigan Constitution and statutes for the protection of all but the corporations taxed under Act 173. By amendment in 1905 (Act No. 282, Secs. 13 and 14), the state board of assessment has been empowered to equalize their assessments under Act 173 with the assessments of other property generally in the state; but before 1905, and as to the taxes in suit, appellants were denied that protection.*

This point will be treated so fully by Mr. Hanchett, with reference to the elaborate statutory provisions of Michigan which show the discrimination against appellants and enforce its importance, that it need not be discussed further here.

## VIII.

*Act 173 applies only to property owned by corporations of the kinds enumerated in the act and does not apply to property of the same kinds owned by natural persons and used by them in the same kinds of business.*

1. The fact is undeniable. The title of the act

is "An Act to provide for the assessment of the property of railroad *companies*, union station and depot *companies*, express *companies*, car loaning *companies*, stock car *companies*, refrigerator car *companies*, and fast freight line *companies*; and for the levy of taxes thereon by a state board of assessors, and for the collection of such taxes." Section 4 requires the state board to make an assessment of the property "of railroad companies, union station and depot companies, express companies, doing business within this state, car loaning companies and refrigerator and fast freight line companies and all *other* corporations owning, leasing, running or operating any freight, stock, refrigerator or any other cars." This section, therefore, itself interprets "*companies*" to mean corporations. Section 5 says, "The term property as used in this act shall be deemed to include all property, real or personal, *belonging to the corporation* subject to taxation under this act, including right of way, roadbed, station, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards and all other property used in carrying on the business of *said corporations*, or owned by them respectively." This proviso of the same section excepts from the act the real estate that is "owned and can be conveyed *by such corporations* under the laws of this state, which is not actually occupied in the exercise of their franchises, or in use in the proper operation of their roads or their *corporate business*." Finally, and emphatically, this same section 5 declares:

"The term company, corporation or association, wherever used in this act, shall apply to and be

construed as referring respectively to any railroad company, union station and depot company, express company, car-loaning company, or refrigerator or fast freight line company, and any and all *other corporations*, subject to taxation under this act”;

and then goes on,—

“The term ‘property having a situs in this state’ shall include all the property, real and personal, of the corporations enumerated in this act.”

Section 6, which requires returns of property for assessment (and is the only section on that subject), says that “the *several corporations* enumerated in this act” must make the returns. No doubt is left about the matter; but, if there could be doubt on the language of the act itself, it would be removed by the language of the constitutional amendment, by virtue of which this statute was passed (and but for which it would at once be unconstitutional; *Pingree v. Auditor General*, 120 Mich., 95); viz. “The legislature may provide for the assessment of the property of *corporations* at its true cash value by a state board of assessors and for the levying and collection of taxes thereon.” (Art. XIV, Sec. 10.) It is only *corporate* property that the Michigan Constitution permits to be taxed after the fashion of Act 173.

2. The question comes, then—and it is one of the fundamental questions in this case—can property of the same kind, used in the same kind of business, be taxed in different ways and at different rates, according to the single fact whether it is owned by a corporation or by natural persons (either individually or in partnerships or in joint stock associations)?

This question apparently has never been decided directly by this court. The reason doubtless is that

seldom—and perhaps never except by the California Constitution, passed upon in the Railroad Tax Cases,—has an attempt been made to base different taxation in a direct and unmistakable way on the mere corporate or unincorporated character of the owner. What this court has decided, however, concerning the necessity of a reasonable basis for classification, which affords a legitimate support for differences of treatment, such as are actually made, and concerning particular examples of classification lacking such a reasonable basis, is amply sufficient to cover the point; as we shall later see. And the question now in hand was directly and emphatically decided by Justice Field and Judge Sawyer in the California Railroad Cases.

*County of San Mateo v. Southern Pacific Ry. Co.*, 13 Fed., 145.

*Railroad Tax Cases*, 13 Fed., 722.

*County of Santa Clara v. Southern Pacific Ry. Co.*, 18 Fed., 385.

The whole question was fully considered by Justice Field (see particularly pages 405-409); and by Judge Sawyer (see particularly pages 429-440). These extracts are worthy of immediate quotation.

“All property of railroad corporations, whether used in connection with the operation of their roads or entirely distinct from any such use, is estimated without regard to any mortgages thereon, while the property of natural person is valued with a deduction of such mortgages.

Of the property of the railroad company,—the Southern Pacific,—several million acres of farming lands are included in the same mortgage which covers roadway, roadbeds, rails, and rolling stock of the company. No distinction is made in the assessment of the value of any of this property because of the

use of it. The whole is assessed in the same manner without regard to the mortgage thereon; and the taxes on the whole of it thus assessed, with the exception of the taxes on the roadbed, roadway, rails, and rolling stock, have been paid by the companies or parties to whom, since the levy, certain parcels have been sold. The discrimination between the railroad companies and individual proprietors, in the estimate of the value of their property, is made because of its ownership, and not from any specific differences in the character of the property, or in the specific uses to which it is applied.

The farming lands held by the company are not different in character from adjoining farming lands held by natural persons, yet they are assessed, under the system established by the constitution of the state, upon different principles. The roadbed, roadway, rails and rolling stock of the railroad companies are not different in their nature or use from the roadbed, roadway, rails, and rolling stock owned in many cases by natural persons, yet they are subject to a different rule of assessment. It is not classifying property to make a distinction of that character in estimating its value as a basis for taxation. It is making the amount of taxation depend, not upon the nature of the property or its use, but upon its ownership. And if this can be done, there is no protection against unequal and oppressive taxation. As justly observed by Mr. Edmunds, in the *San Mateo case*:

‘If you once concede the point that you may classify different rates upon the values of things, or may put up your values on different principles, as values by deduction or otherwise,—which is the same thing stated in another way,—then there is no check upon the exercise of arbitrary power. The mob or commune that can get possession of the state legislature for one term may despoil every one of the citizens whom it chooses to despoil, and the liberty and the security of the Constitution of the United States, secured through painful exertion and great consideration, crystallized in unmistakable language,—historic, indeed, and bene-

ficent as it is historic, securing national intrinsic rights everywhere and to everybody,—will turn out to be an utter sham and delusion.’ ”

(18 Fed., 408, 409.)

“The discrimination is made against the company, for no other reason than its ownership.”

(18 Fed., 394, 395.)

“The principle which sanctions the elimination of one element in assessing the value of property held by one party, and takes it into consideration in assessing the value of property held by another party, would sanction the assessment of the property of one at less than its value,—at a half or a quarter of it,—and the property of another at more than its value,—at double or treble of it,—according to the will or caprice of the state. To-day, railroad companies are under its ban, and the discrimination is against their property. To-morrow it may be that other institutions will incur its displeasure. If the property of railroad companies may be thus sought out and subjected to discriminating taxation, so, at the will of the state, by a change of its constitution, may the property of churches, of universities, of asylums, of savings banks, of insurance companies, of rolling and flouring mill companies, of mining companies, indeed, of any corporate companies existing in the state. The principle which justifies such a discrimination in assessment and taxation, where one of the owners is a railroad corporation and the other a natural person, would also sustain it where both owners are natural persons. A mere change in the state constitution would effect this if the federal constitution does not forbid it. Any difference between the owners, whether of age, color, race, or sex, which the state might designate, would be a sufficient reason for the discrimination. It would be a singular comment upon the weakness and character of our republican institutions if the valuation and consequent taxation of property could vary according as the owner is white, or black,

or yellow, or old, or young, or male, or female. A classification of values for taxation upon any such ground would be abhorrent to all notions of equality of right among men. Strangely, indeed, would the law sound in case it read that in the assessment and taxation of property a deduction should be made for mortgages thereon if the property be owned by white men or by old men, and not deducted if owned by black men or by young men; deducted if owned by landmen, not deducted if owned by sailors; deducted if owned by married men, not deducted if owned by bachelors; deducted if owned by men doing business alone, not deducted if owned by men doing business in partnerships or other associations; deducted if owned by trading corporations, not deducted if owned by churches or universities; and so on, making a discrimination whenever there was any difference in the character or pursuit or condition of the owner. To levy taxes upon a valuation of property thus made is of the very essence of tyranny and has never been done except by bad governments in evil times, exercising arbitrary and despotic power."

(18 Fed., 395, 396.)

"Classification should have reference to the different character, situation and circumstances of the property, making a different form or mode of taxation proper, if not absolutely necessary. It cannot be arbitrarily made with mere reference to the nationality, color, or character of the owners, whether natural or artificial persons, without any reference to a difference in the character, situation or circumstances of the property. Should second mortgagees foreclose a mortgage on a railroad or other property of a 'railroad or other *quasi* public corporation,' and a natural person become the purchaser of the road, or other property subject to the prior mortgage, at the next annual assessment the amount of the first mortgage bonds, or indebtedness secured, would be deducted from the value of the road or other property, and the amount of the bonds or other indebtedness assessed to the

mortgagees. Such, also, would be the result in the case before supposed, if C.—a railroad or other *quasi* public corporation—should convey its land to a natural person subject to the mortgage to B.; and although there would be no change in the condition, circumstances, use, or value of the property,—the change being only in the owner,—C.'s grantee would only be required to pay one-half the amount of taxes which C. had been compelled to pay, and B., who before paid nothing, would be required to pay the other half. Should the Southern Pacific Railroad and its lands pass into the hands of a natural person, upon a foreclosure and sale under a second mortgage, subject to the mortgage now on them, the value of this very security would be deducted from the value of the property at the next annual assessment. Thus, although the property would in all respects be the same, and similarly situated, and applied to the same uses, for natural persons, as well as corporations, may own and operate railroads,—a mere change in the ownership would require and effect an entire change in the mode and basis of the assessment, and the amount of taxes levied on the owner. Nothing it seems to me, could more clearly demonstrate the unsoundness of the proposition that only an admissible classification of property for the purposes of taxation is involved in the different schemes provided for taxing the property of 'railroad and other *quasi* public corporations,' and the property of natural persons and of other corporations. Railroad and other *quasi* public corporations are not even put upon the same footing with other corporations, the latter being placed upon an equality with natural persons. A mere change of ownership, under the provision in question, largely affects the amount of taxes paid by the owner upon the same property, without any change in the character, condition, value, use, or circumstances of the property itself. A provision that a black man shall pay double the amount of taxes paid by a white man on the same kind of property similarly situated and used, or upon the identical property, in consequence of a mere change of ownership from a white man to



a black man, might with as good reason be sustained on the principle of classification invoked. The classification in this case is clearly by ownership, and not by condition or use."

(Judge Sawyer, 18 Fed., 432, 433.)

"If this tax can be imposed upon the defendant simply because it is a corporation, when it could not be imposed upon natural persons holding, owning, and using its property under like conditions in all other respects, then it would be difficult to point out what rights are left to corporations, or natural persons in their corporate relations, which the state, under the Fourteenth Amendment, or otherwise, is bound to respect."

(Judge Sawyer, 18 Fed., 440.)

I turn now to some decisions of this court. The leading one in this connection is

*Cotting v. Kansas City Stock Yards Co.*, 183 U. S., 79.

In this case it was held improper to classify, for the purpose of regulating their charges, stock yards doing a large amount of business apart from stock yards with small business. The fundamental point on which the decision rested was, in the language of Judge Brewer:

"Equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretense that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra two head

of cattle per day does not change the character of the business. If once the door is opened to the affirmation of the proposition that a state may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would."

(183 U. S., 112.)

The quotation from Judge Catron, mentioned by Justice Brewer, is as follows:—

"Every partial or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. *Were this otherwise, odious individuals and corporate bodies would be governed by one rule, and the mass of the community, who made the law, by another.*"

(*Vanant v. Waddell*, 2 Yerger, 260, 270; quoted in 183 U. S., on page 105.)

It was a discrimination against railroads, as against the rest of the world, that was condemned in

*Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U. S., 150. (On the question of classification see especially the language of Judge Brewer on page 155; and on pages 165, 166.)

"On the other hand, it is also true that the equal protection guaranteed by the Constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed. *Yick Wo v. Hopkins*, *supra*, forcibly illustrates this. In that case a municipal ordinance of San Francisco, designed to prevent the Chinese from carrying on the laundry business was adjudged void. This court looked beyond the mere letter of the ordinance to the condition of things as they existed in San Francisco, and saw that under the guise of regulation an arbitrary classification was intended and accomplished."

(*A., T. & S. F. Ry. Co. v. Matthews*, 174 U. S., 96, 104, 105.)

*Blake v. McClung*, 172 U. S., 239, is an important and significant case. It decides that resident creditors cannot be given by statute a priority over citizens of other states in the distribution of an insolvent company's assets; but that this rule does not extend to corporations of other states, who are creditors "not within the jurisdiction" of the state passing the statute, because (1) they are not citizens of the state where they are incorporated within Art. IV, Sec. 2, of the Federal Constitution (guaranteeing to the *citizens* of each state all the

privileges and immunities of all the citizens in the several states) and because (2) the Fourteenth Amendment assures the equal protection of the laws by a state only to "persons *within its jurisdiction*." (See pages 260, 261.) So the court felt obliged to rule, solely on account of the limitation of the equal protection of the laws under the Fourteenth Amendment to persons "within the jurisdiction"; "however unjust such a regulation (as this statute established) may be deemed," said Justice Harlan. It is obvious that the court deemed the discrimination between local creditors, though natural persons, and foreign corporations, creditors, as not "equal protection"; and, if so, a discrimination between unincorporated creditors and corporate creditors *within the jurisdiction* (*i. e.*, there incorporated or there resident) would be a violation of the Fourteenth Amendment.

The following decisions are also important:—

*Strauder v. W. Va.*, 100 U. S., 303, 309.

*Yick Wo v. Hopkins*, 118 U. S., 356, 368.

*Dobbins v. Los Angeles*, 25 Sup. Ct. Rep., Part 1, pages 18, 22.

On the general subject, see,

Judson on Taxation, Sec. 455.

Guthrie on Fourteenth Amendment, pp. 120-122.

The Court of Appeals of the Seventh Circuit directly decided the point in

*Northern Pacific Ry. Co. v. Walker*, 47 Fed., 681.

Justice Caldwell said for the court:—

“While property may be classified for the purposes of taxation, between the subjects of taxation in the same class there must be equality. Property of the same kind, and in the same condition, and used for the same purposes, cannot be divided into different classes for purpose of taxation, and taxed by a different rule, because it belongs to different owners. But this is precisely what the act under consideration seeks to do. It exempts the lands of the company from taxation simply and solely because they belong to the company, and taxes all other lands by a uniform rule according to their value. It was not competent for the legislature, either under the organic act or the Fourteenth Amendment of the Constitution of the United States, to classify the lands in the territory, for purposes of taxation, into lands owned by railroad companies and lands owned by all other persons, and declare that the former should not and the latter should be taxed. The prohibition in the organic act against making ‘any discrimination in taxing different kinds of property’ necessarily implies a prohibition against any discrimination in taxing the same kind of property. It establishes the just and reasonable rule, which has become fundamental in our American system of taxation, that the burdens of taxation shall fall equally upon all owners of the same kind of property.” (p. 686.)

The cases cited on the subject of classification generally in Point I of this second division of the brief are extremely pertinent here; and I refer to them in this connection.

Finally, let me call the court’s attention to the powerful language of Senator Edmunds in his argument of the California Railroad Tax Cases, quoted by Judge Sawyer in 18 Fed., on pages 429, 430. It is too long to quote in this brief; but it is worth any man’s reading.

A classification for purposes of taxation which is based merely upon the corporate or unincorporated

character of the property owner is, like that condemned in *Yick Wo v. Hopkins*, 118 U. S., 356 (see especially 368), an arbitrary division of the community into those who have and those who have not legislative favor.

3. If discriminatory legislation is allowable *against* corporations, on the ground merely of their corporate character, concerning property of the same kind and in the same use with the property of natural persons not included in the adverse legislation, it will not do to forget that discriminatory legislation will be possible, on the same ground merely of corporate character, *in favor of* the corporations.

4. The possession of "franchises" is not a basis of special treatment of corporations,—at any rate except as to the franchises themselves. It cannot warrant special treatment of their other property for taxation, which is not applied to the same sort of property owned by natural persons and used in the same way.

(a) The franchises of a corporation have been well described as "to be" and "to do." The first is merely its privilege of existence as a corporation; the second consists of its powers. There is a third class of things that have been called "franchises," and perhaps properly enough so-called because granted by the public, viz.: rights to use public property, such as the streets of a city for car tracks, or water pipes, or in similar ways. These last, however, are franchises only in the sense of being granted by the public; they are easements or other property rights, in the same way and with the same character as if they were granted in the same premises by a private owner.

The franchise "to be" a corporation, as it gives it only existence, is no more than the existence of a natural person. And it is not salable or otherwise transferable.

*Detroit Citizens Street Ry. v. Common Council*, 125 Mich., 673, 678, 680.

The franchises "to do," being powers of a corporation, are, as the Michigan Supreme Court said:

*"incident to all corporations, and are manifestly of no more value than the right to exist; for they naturally and impliedly go with it, and are not transferable. Every corporation has, by implication, authority to acquire and dispose of property, and to carry on business as a private person would do, for the purposes for which the corporation is organized."*

(125 Mich., 673, on page 679.)

These franchises "to be" and "to do" have, as the Michigan Supreme Court further and extensively argued, little, if any, direct value, but may react largely on the value of the other property owned by the corporation, through making it usable as a large and profitable aggregate property. (See *Detroit Citizens Street Railway Company* case, on pp. 679-682.) But it is immaterial for the present discussion whether they are assessed directly or indirectly. Whether they are taken as assessable property themselves, or only as incidentally affecting the value of a company's other property, it is true, as Justice Field said:

*"The doctrine of unlimited power of the state over corporations, their franchises and property, simply because they are created by the state, so frequently and positively affirmed by counsel, has no foundation whatever in the law of the country."*

(See his discussion of this entire question in 18 Fed.,

on pp. 406-407; and Judge Sawyer's treatment of the same matter in the same case on pages 436-440.)

(b) It is true that franchises, like everything else, may be taxed; and they may be taxed specifically rather than on the *ad valorem* basis, if the legislature sees fit; but the Michigan legislature has not seen fit to impose a specific tax on franchises. It treats them simply as property, and neither applies to them a different method of tax from what is put upon other property of the corporation nor subjects them to a different rate. Their value is included, whether directly or indirectly, in the very assessments underlying the taxes at issue in this litigation.

The statute, Act 173, does not proceed on any idea or declare any policy of treating franchises differently from other property. As Judge Sawyer said: "This is not, and does not purport to be, in any sense a franchise tax." (p. 437.) Indeed, the Michigan constitutional amendment, which authorizes "average-rate" taxation and under which alone Chapter 173 was passed, does not authorize peculiar franchise taxation, but says merely that "the legislature may provide for the *assessment of the property* of corporations *at its true cash value* by a State Board of Assessors, and for the levying and collection of taxes thereon" after the average-rate plan. (Art. XIV, Sec. 10.)

(c) The meat of the matter is, as respects taxation (when an *ad valorem*, and not a specific, tax is imposed upon them), that franchises are simply property, like other property, which enlarge the aggregate assessable property of the corporation, but do not alter the kind of its business or the use to which its property is put.



(d) No two railroads or manufacturing companies or corporations organized for other kinds of business have in their business (though it be the same) exactly the same kind of property in all respects. One railroad has sleeping cars; another has not. One has a Mississippi river or Detroit river bridge; another has not. One has automatic signal plants; another has not. One brewery has special buildings or special machinery of a kind that another brewery does not use. One hotel company has a stone building, another has a wooden one. Differences are multitudinous and surely no such diversities can lead to the conclusion that the two railroads or the two brewereis or the two hotel companies are in a different business, or that their properties can be subjected to different taxation on the theory that they are in a different use.

(e) Other kinds of corporation than those enumerated in Act 173 have franchises, but are not subjected to taxation of the kind established by Act 173. As said by Justice Brewer:—

“If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads of all corporations are selected to bear this penalty. The rule of equality is ignored.”

*Gulf, Colorado & Santa Fe Ry. v. Ellis*, 165 U. S., 150, on page 157.

5. While it is immaterial, the record shows the existence of railroads owned by natural persons in Michigan and of the same kind with railroads owned by complainants.

But even if no such railroads owned by others than corporations were presently in existence in Michigan, they might come into existence any day; and the constitutionality of a statute is to be tested by what is possible under the law, not by the mere transient and accidental situation at a given moment.

*Stuart v. Palmer*, 74 N. Y., 183, 188.

*State v. Canada Cattle Car Co.*, 89 N. W. Rep., 66 (Minn.).

*Minneapolis Brewing Co. v. MacGillivray*, 104 Fed., 258, 269.

*Tenement House Dept. v. Moerchen*, 89 App. Div., 526, 531, 538.

The privilege of owning and operating railroads as public carriers belongs to natural persons at common law.

1 Rorer on Railroads, Sec. 2, p. 8.

1 Elliott on Railroads, Sec. 1, p. 1.

*McKee v. G. R. Street R. Co.*, 41 Mich., 274, 279.

*Moran v. Ross*, 79 Cal., 159 (21 Pac. Rep., 547).

*County of Santa Clara v. Southern Pacific Ry. Co.*, 18 Fed., 385, on page 433.

*Henderson v. Ogden City Ry. Co.*, 7 Utah, 199 (26 Pac. Rep., 286).

*Bank of Middlebury v. Edgerton*, 30 Vt., 182.

*Lawrence v. R. R. Co.*, 39 La. An., 427.

*In the Matter of Kerr*, 42 Barb., 119.

Judge Sawyer said:

"That natural persons may own and operate a railroad in this state, as well as corporations, is manifest

from the fact that this road is mortgaged under the authority of the laws of the state, and this of itself necessarily involves the power to sell and convey, in case the occasion arises, under a decree of foreclosure, to any party who is willing to pay the highest price for the road. It also appears, as a fact in this case, that a natural person purchased a railroad operated in more than one county, extending from Marysville, in the County of Yuba, to Oroville, in the County of Butte, under a decree foreclosing a mortgage, received his conveyance therefor, and that he has been operating it and been assessed and has paid taxes upon it for more than two years past. So, also, numerous statutes of the state were introduced in evidence, granting the right to natural persons, not incorporated, to build and operate railroads. \* \* \* Thus private parties owning and operating railroads covered by mortgages, and situated in all respects precisely as railroad corporations are situated with respect to the same *kind of property*, would only be required to pay taxes upon the excess of the value of the road or other property over the value of the security; while the holder of the security would be assessed for and pay the taxes on the value of the security."

(18 Fed., 385, on page 433.)

The Supreme Court of Michigan said:

"There is no more difficulty in allowing individuals to exercise these powers than corporations, and the use of them for a brief period in no way interferes with the protection of the franchise in perpetuity. There might be difficulties in managing larger enterprises, and different rules have been applied to them. But there are no difficulties in the way of private management of a street railway, and there is no reason why the statute which by its language includes them should be made to exclude them."

(41 Mich., 274, on page 279.)

The decision in this case related as much to ferries, turnpikes, and bridges, as to street railways.

The Vermont court said:

"It is not necessary in this case that we should hold that the franchise to this company to be a corporation is a subject of sale or transfer. The right to build, own, manage and run a railroad and take the tolls thereon is not of necessity of a corporate character or dependent upon corporate rights. It may apply to and be enjoyed by natural persons, and there is nothing in its nature inconsistent with its being assignable."

(30 Vt., 182, on page 190.)

The Utah court said:

"In the nature of things, is there any sufficient reason why individuals, as such, should not be permitted to construct and operate railroads as well as natural persons through the instrumentality of corporations? A private corporation is a legal person, with power to act as a natural one to the extent that its charter authorizes it to. When the road is owned and operated by a corporation the stockholders own the road through the agency of the corporation, but the use is in the public. When individuals, as such, own and operate it, the property is in them, and the use is then in the public. In the first case, the proceeds of the business, after deducting expenses, is paid to the stockholders as dividends. In the latter, the individuals retain such earnings as are not consumed by expenses. Either can acquire the right of way by contract or in the exercise of the right of eminent domain when the law authorizes it; and neither can acquire it in the latter way without such a statute. The right of natural persons through the instrumentality of corporations are usually limited to one department or class of business; but without such instrumentality their rights extend to every field which their enterprise, their skill, or business capacity and inclinations may enable and cause them to enter. We do not find anything in business methods or in the fitness of things to prevent natural persons from constructing and operating railroads when they have the inclination, and can command the pecuniary

means to do so; nor do we know of any statute in force in Utah, or any rule of law or adjudged case, against it."

(7 Utah, 199.)

Beside the common law right of natural persons to own and operate a railroad, *the statutes of Michigan recognize such right*. More commonly, of course, the statutes contemplate corporate ownership, because that is the more common fact; but, instead of forbidding natural ownership, they refer to it here and there in terms. See Sections 6271, 6280, 6281, 6282, 6313, 5256, 5257, 5458, 5461 of the Compiled Laws of 1897. Sections 5256 and 5257 are from Act 142 of 1895, and Sections 5458 and 5461 from an act of 1893.

It will be noticed, too, that Sections 6271 and 6313 indicate that the word "company" in the statutes often means any aggregation of persons owning a railroad, whether or not incorporated; further, Sections 6224, 6262, 6331, 6341 and 6370 relating to foreclosure of railroad mortgages, all contemplate the purchase of the railroad at foreclosure sale by natural persons, and their possession and enjoyment of the railroad thereafter. Indeed, the Michigan Supreme Court has said of these statutes:

"May it not be said that the rights and property of this corporation vested in the purchaser upon the foreclosure sale, and that, *independent of any express statutory authority to operate*, the purchaser was authorized to maintain his property rights and to operate this railroad in accordance with the franchise of the original company and under precisely the same conditions? If this be so, the authority to incorporate was not essentially a part of the property right,

but was a privilege granted by the state which might be withdrawn."

*Commissioner of Railroads v. G. R. & I. Ry. Co.*, 130 Mich., 248, on page 253.

We thus see that the common law permits natural, as distinguished from artificial, ownership of railroads; that the statutes of Michigan do not forbid it; that many Michigan statutes must be taken as applicable to such a case; and that the Michigan statutes affirmatively contemplate the occurrence of natural ownership of a railroad, through foreclosure sale if in no other way. At least one or two naturally-owned railroads already exist in Michigan; but any day more may come into existence. As the law allows it, the law must be taken to expect it. Indeed, if the constitutionality of Act 173 were held to depend upon the actual existence of a railroad owned by natural persons, it would be within the power of, and easy for, stockholders or officers of any of complainant companies to organize a railroad any day and own it themselves without incorporation. Is the constitutionality of this statute to be regarded as lying within voluntary action of a few individuals? Is the statute to be considered as constitutional at this moment, though it may not be to-morrow?

6. Act 173 applies to express companies; and it is well known, besides being proved in the record, that natural persons, as well as corporations, are doing express business in Michigan. If, then, the argument contained in this Point VIII is sound, the statute is palpably invalid as to express companies. It is equally invalid as to any of the other kinds of companies

enumerated in it, if natural persons are engaged in Michigan in like kind of business. Will the court suppose that the legislature would have applied the system of taxation contained in Act 173 to a part of the companies enumerated in that act, if it had been informed, by a decision of this court, that it could not apply it to all those companies? It is not readily to be believed that the legislature would have singled out railroads only, or a few of the different kinds of companies, for special treatment in a group even narrower than the legislature created.

7. The constitutional amendment says that the legislature may tax in the special way contemplated by it "the property of corporations." (Art. XIV, Sec. 10.) That includes manufacturing corporations; commercial corporations; and all other kinds of corporations. If the legislature can under this constitutional provision tax corporations of any kind after average-rate plan and exclude natural persons in the same business from the operation of that plan, it can extend the average-rate system of taxation to manufacturing companies or commercial companies any day, and still leave natural persons engaged in like manufacture or commerce out of the law. This illustrates the perils that lie in the idea that a corporation may be taxed differently from other persons with the same kind of property, used in the same kind of business.

## IX.

*Art. XIV, Section 14, of the Michigan Constitution requires (and, before the constitutional amendments of 1900 were adopted, it was for the benefit of all persons and property in Michigan) that "every law which imposes, continues or revives a tax shall distinctly state the tax and the objects to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object"; but the amendments of 1900—Art. XIV, Sections 10-13—permit corporations to be deprived of that protection, and appellants have been deprived of it by Act 173.*

1. The quoted constitutional provision was taken by Michigan from New York, where it was Art. VII, Section 13, of the N. Y. Constitution of 1846.

1 N. Y. Rev. Stats., page 68 (5th ed.).

The meaning and purpose of the provision were thus set forth by the New York Court of Appeals:

"The Constitution, prescribing the requisites of a law imposing a tax, is in harmony with the other provisions designed for the protection of the taxpayer. Its terms are precise and unambiguous, leaving no way of escape from a literal compliance with them, and no room for evasion by any lax interpretation. They are so plain they need no interpretation. It declares that 'every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.' The tax would have been well specified in amount but for a clause, found for the first time in a tax law. A tax of three and one-half mills upon the dollar of the assessed value of the real and personal property in the state is definite and certain. But the legislature have



qualified the same and authorized the tax to be reduced if it should be found, upon a corrected estimate, that a lesser tax would give the necessary means. The law imposes a tax of three and a half mills per dollar, or so much thereof as may be necessary to provide for the payment, etc. *This is not a specific and distinct statement of the tax to be levied.* It is simply a statement of the maximum tax to be levied, leaving it to the discretion of the administrative officers of the state to levy such tax as they shall find necessary up to the limit named. The legislature cannot, under the constitution, thus delegate the power of taxation. They must determine the amount necessary and adequate, and declare the amount to be levied absolutely. If this form of enactment is allowable, a law authorizing a tax of fifty per cent. of the assessed value of the taxable property of the state, or so much thereof as might be necessary, would be valid, and the whole legislative taxing power delegated to the other departments of the state government. *The law is invalid as not stating the tax imposed."*

*People v. Board of Supervisors of Kings County*, 52 N. Y., 556, on pages 566 and 567.

This shows, as the constitution's own language makes perfectly clear, that as to all but corporations in Michigan there is a direct constitutional requirement (a) that the amount of any tax be fixed by the legislature and that such duty be not delegated to others, and (b) that the amount of the tax be "*distinctly stated*" by the legislature that fixes the tax.

(a) The first requirement adds nothing to what we have already seen that the fundamental principles of republican government demand; and I have already argued (Point V) that the grant of this protection to some and its denial to others is contrary to the four-

teenth amendment of the federal constitution. The special value of the Michigan constitution's provision in this respect lies in the fact that it furnishes an explicit declaration by the people of Michigan concerning the importance attached, in the Michigan system of laws, to a feature which heretofore I have contended is fundamental in the whole American system.

(b) The constitutional provision, however, does more than require the legislature itself to fix the amount of tax. Beyond that, it requires the legislature *itself* to "*distinctly state the tax.*" Here we get a feature in which Act 173 denies to appellants such fundamental protection as is given to all others in Michigan by virtue of the quoted constitutional provision, even though for the purposes of the present point it be admitted that the amount of tax levied under Act 173 is fixed by the Michigan legislature and the power to fix that amount has not been delegated. *Even if Act 173 is to be considered as fixing the amount of tax to be raised under it, it does not distinctly state that amount.* "Distinct statement" must mean that the amount of tax can be found in the law itself, either through statement of the gross sum that the state decides to raise or through statement of the definite rate which the state decides upon. Neither of these things is in Act 173. Nobody can find out the amount of tax to be raised for the state under Act 173 by reading the whole of that statute. *On the contrary, reference has to be made to multitudinous enactments of the local legislatures of the state before anybody can ascertain the amount of tax.* And not only so, but reference must be made to all the assessments

throughout the state before the amount of tax under Act 173 can be known; for those assessments operate, *not merely to apportion the tax*, but to determine its very amount. Now, look at the further language of the Michigan constitution, as it operates for the protection of others than appellants, viz. "*and it shall not be sufficient to refer to any other law to fix such tax.*" This is an express and emphatic prohibition against making the amount of tax to be collected under any statute ascertainable only upon reference to other legislative acts. It requires each statute that the legislature passes for collection of a tax to state the amount of that tax *directly, and not indirectly*. Act 173 (even if, as I have said, it be assumed that it fixes the amount of tax at all) fixes it only indirectly, by reference (1) to the other enactment of the state legislature which fixes the state tax for other people (and which affects, therefore, the average-rate); (2) to the enactments of the local legislatures throughout the state which fix the amount of local taxes that enter into the average-rate; and (3) to the assessments throughout the state, which under Act 173 determine, not the apportionment of the tax laid under that act, but the amount of that tax.

Appellants, therefore, are denied by the fourteenth amendment to the state constitution and Act 173 a protection, in the way of *distinct and direct* statement by the legislature itself of the tax it requires, which so radical a part of the Michigan laws as the state's constitution guarantees to all others. Is this the equal protection of the laws? Can it be said that what the people of Michigan think of importance enough to put

into their organic act of government and what, therefore, the Michigan laws themselves confess to be of fundamental value, is of so little moment that it may be continued for the benefit of some and taken away from others without working an inequality in the protection of those very Michigan laws? The legal system of Michigan, and the people that made it, have themselves set a value upon the protection now denied appellants. (See at length on this point pages 567-570 of the opinion in 52 N. Y., 556.)

2. The provision of Art. XIV, Sec. 14, of the Michigan constitution is important in still another way. It was part of the purpose of that provision, undoubtedly, to give the public notice, through the distinct and direct statement in each statute of the amount of tax proposed to be raised by that statute, of the pending tax proposition in simple and definite form, in order that the people might go to the legislature, either in person or by the method of petition guaranteed to them, as we have seen, by other provisions of the same constitution, and argue against any taxation whose amount might seem oppressive or whose object might seem objectionable. In other words, it was part of the purpose of this constitutional provision to afford *a real and reliable opportunity* for hearing by the legislature; not only through giving notice that some tax was proposed, but equally through giving notice just how large a tax was proposed. The people of Michigan, all of them except appellants, retain the protection of the constitution in that respect. Appellants had it until lately; but now are refused it. How could they go before the legislature, either when Act 173 was

pending for enactment or since its enactment, and argue that it would raise for the state more money than the state would need? Neither appellants nor anybody else could tell how much it would raise, and, therefore, they could not intelligently discuss the first essential for a comparison of the tax with the state's needs. In order to forecast the operation of the law, in raising revenue for the state, anybody would have to forecast the independent action of all the local legislatures of the state, in their own enactment of taxes.

This furnishes another proof of the large importance to taxpayers of the constitutional provision under discussion. Its immediate bearing is that, though we again suppose for the purpose of argument that Act 173 is not a delegation to the local legislatures through the state of the power to tax for state purposes, still through the state's failure itself to declare the amount of tax, proposed to be collected from the state's subjects, the people who would be called upon to pay the tax could have no idea of its amount, and, therefore, could have no real opportunity for hearing by the legislature on the subject of the tax and for discussion of its propriety.

*Third. Act 173 violates the Constitution of Michigan, which, notwithstanding the amendments of 1900 (adopted to legitimate the "average-rate"), still requires that all assessments be at the "cash value" of the assessed property, and still requires that all taxation be uniform (except, of course, as to "specific" taxes) in respect of assessment.*

1. The credits of all persons in Michigan, except those taxed under Act 173, are assessed at their *net* value, after deduction of the debts of the taxpayer. This is expressly provided in the statutes. Section 3831 of the Michigan Compiled Laws of 1897, which restates Section 8 of the "Act to provide for the assessment of property and the levy and collection of taxes thereon," etc., requires taxation of "all credits of every kind belonging to inhabitants of this state over and above the amounts respectively owed by them, whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the state."

The form of return made by taxpayers at large calls for a return by them of:

"2. All credits of every kind owing to such person, whether such indebtedness is due from individuals or from corporations, public or private, or whether debtors reside within or without this state, including all deposits in banks or with other corporations, or individuals, together with a statement of any part thereof that is secured by real estate mortgage on lands situated in some other state;

"3. All *bona fide* indebtedness owing by such person, giving an itemized statement in detail, how secured, and to whom owing and the residence of such

creditors and the amount due each, *provided he desires to have the same deducted from his credits.*" (Section 3842.)

It is clear, therefore, that the value of the credits of persons generally for taxation is their excess above debts. On the other hand, under Act 173, all the credits of corporations are required to be assessed at their *gross* value, without any deduction of debts.

Thus, Section 5 of the act declares:

"The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, road bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch boards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property."

Section 6 requires the corporation to report for taxation upon a prescribed blank, which calls, among other things, for:

"*Ninth.* A detailed statement of the personal property, *including* moneys and *credits* owned by the company in Michigan, on the second Monday in April in the year in which the report is made, where situate, and the value thereof."

No provision is made that the debts of the company be reported; and no provision is made anywhere in the act for deduction of debts from credits, or for any consideration of that question by the State Board of Assessment. And the Board's powers are measured by Act 173. Indeed, it is admitted, without the slightest pretense to the contrary, that the Board *in fact* did

not make or attempt any deduction of a railroad's debts from its credits.

The difference of statutory rule and the actually different treatment of appellants and of taxpayers generally in respect of credits are, therefore, unmistakable.

2. The constitutional rule that the assessment of property, when it is taxed *ad valorem*, be at its cash value, in the case of *all* taxpayers, is equally plain. These provisions are printed in Appendix B.

Article XIV, Section 12, was not amended in 1900, and it reads now, as ever since its adoption in 1850, thus:

"All assessments hereafter authorized shall be on property at its cash value."

This section obviously covers assessments by the State Board, as well as any other assessments. But, the specific provisions of the constitution, concerning what the legislature may authorize the State Board to do, are no less direct in regard to assessment at cash value.

Article XIV, Sections 10 and 11, as amended in 1900, are as follows:

"Sec. 10. The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide *for the assessment of the property of corporations, at its true cash value*, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November 6th, A. D. 1900,



shall be applied as provided for specific state taxes in section one of this article.

"Sec. 11. The legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the *rate* of taxation of such property shall be at the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which *ad valorem* taxes are assessed for state, county, township, school and municipal purposes."

The form of these sections, before their amendment in 1900, was as follows:

"Sec. 10. The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from banking, railroad, plank road and other corporations hereafter created.

"Sec. 11. The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law."

It thus appears that the constitution formerly made only one declaration about assessments, viz., that of Section 12, which remains unaltered; and, in changing Sections 10 and 11, the purpose was only to permit an "average-rate" (which, it will be remembered, the Supreme Court of Michigan had declared invalid in 1899; *Pingree v. Auditor General*, 120 Mich., 95). But, the constitutional amendment adds to the unqualified rule of Section 12, about assessments, a particular and direct statement that "the legislature may provide for the assessment of the property of corporations, at its *true cash value*," by a State Board of Assessors. (Sec.

10.) The complete uniformity of all assessments, whether under the general tax laws or under the average-rate plan, was, therefore, sedulously required.

Still further,—*the uniform rule of taxation, except on property paying specific taxes*, established by the old Section 11, is preserved with the single exception of the "average-rate." Section 11 remains unaltered, save by the addition of the proviso, making the average-rate possible. The requirement, in the proviso, of "an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors" for average-rate taxation simply calls for uniform application even of the average-rate. That is, while corporations now may be taxed at one rate, though persons generally are taxed at another, even the different corporate rate must be uniformly imposed, and not arbitrarily, among corporations. This requirement of uniform taxation of corporations, in the proviso, is not inconsistent with the general requirement of a uniform rule of taxation made by the old Section 11, continued unaltered as the first sentence of the new Section 11. If there could be doubt otherwise on that point, as respects assessments, it is impossible in view of the explicit declaration of Section 10, as amended, that the assessments by the State Board, like all assessments under Section 12, must be at "cash value."

Indeed, the Michigan Supreme Court has already said that the amendments of the State Constitution in 1900 do not alter the rule that assessments of *all* property must be alike, at cash value; for, in the mandamus proceeding brought by the Board of Educa-

tion of Detroit to settle the construction of Act 173, as respects computation of the average-rate, it said:

"This constitutional provision (*i. e.*, for corporate taxation at an average-rate) cannot be segregated from other provisions relating to the subject of taxation. Construed in the manner above indicated, it is in entire accord with our whole system of taxation *which is not only that railroad property, but that all other property, shall be assessed at its cash value, and that all classes of property shall bear the burden of taxation equally.*"

*Board of Education v. State Assessors*, 133 Mich., 116; 120.

3. The decision by the State Court in *Pingree v. Auditor General*, 120 Mich., 95, settles two things of immediate importance:

(1) The tax under Act 173 is not a "specific" tax, but a property tax. That was directly decided. (pp. 96-102.)

(2) Before the amendments of the constitution in 1900, the "uniform rule of taxation except on property paying specific taxes," required by Section 11, forbade difference of rate on different kinds of property. (p. 102, *et seq.*) *A fortiori*, the requirements still by Section 12 that *all* assessments be at cash value, and by Section 11 that assessments by the State Board be at cash value, forbid assessment of credits, when owned by corporations, at their gross amount, without any allowance for debts, while all other persons' credits are assessed at their net value, above debts. Identity of rate even being essential to "uniformity" under the Michigan Constitution before the amendments of 1900, and being still essential with the express exception of an "average-rate" upon corporations, identity of sub-

stantial method in valuing the credits of all persons, natural or corporate, is essential under the identical rules, still found in the constitution, for assessment of all property, whether owned by natural persons or by corporations, at "cash value."

Indeed, this very question is settled, not only by *Pingree v. Auditor General*, but also by

*Detroit Citizens Street Railway Co. v. Detroit*,  
125 Mich., 673.

This decision was on the exact point of what "uniformity" requires in the way of deducting debts from credits. The statute, declared unconstitutional, allowed to street railways deduction of debts from the value of *any* personal property, though the general rule for assessing others was to deduct debts only from credits; and that difference was held improper, because not compatible with uniformity. The court said:

"Again, the provision for deducting debts from personal property would be invalid, because not uniform with the usual method of deducting debts, viz., from credits only." (p. 694.)

And, attention is once more asked to the plain statement that all property is to be assessed at its cash value, on page 120 in

*Board of Education v. State Assessors*, 133  
Mich., 116, quoted above.

The point that Michigan's "uniform rule of taxation" requires identical taxation of all kinds of property (except as now an average-rate is expressly permitted) is further enforced by the decision that an inheritance tax, if imposed upon property instead of being a "specific" tax, is invalid for difference of rate.

(*Chambe v. Wayne Probate Judge*, 100 Mich., 112.)

This position has been reiterated:

*Union Trust Co. v. Probate Judge*, 125 Mich., 487.

*Stellwagen v. Wayne Probate Judge*, 130 Mich., 166, 167.

In the former of these cases, also, the court declared flatly that *Pingree v. Auditor General*, 120 Mich., 95, required identical rates on different properties; saying,—

“As before, the attorney general seems to concede that, if this is a tax upon property, it is in violation of section 11 of article 14, unless it can be called a specific tax upon property, and therefore within its exception; a concession (if we are right in understanding it to be made) which is, in our opinion, justified by the case of *Chambe* and the later case of *Pingree v. Auditor General*, 120 Mich., 95. *The latter case has settled the rule that an ad valorem tax upon property must conform to the uniform rule for the general taxation of property, and that such is not a specific tax, which will be found unequivocally stated in each of the opinions filed in that case.*” (p. 490.)

Denial to banks and insurance companies of the privilege of having deducted from the amount of their assets the amount of real estate mortgages upon which they pay taxes directly is not uniform taxation in Michigan.

*Standard Life & Accident Ins. Co. v. Assessors of Detroit*, 95 Mich., 466.

Further; it was held in *Saltonstall v. Board of Review of City of Sheboygan*, 132 Mich., 196, that it was unconstitutional to provide that farming lands and wild and unimproved lands within a city shall be as-

sessed "at their true cash value considering the location of the same, and not according to any prospective or supposed value of such lands as city property."

The court said:

"Const. Art. 14, Sec. 12, provides that all assessments hereafter authorized shall be on property at its cash value. We are all agreed that this constitutional provision does not leave room for a different basis of valuation of real property as vacant or occupied. Nor can it be evaded by authorizing a valuation of one class of property based upon its value for a particular use only. To use an extreme illustration, a valuable painting might be framed so as to be available for use as a fire screen. Yet it would not do to say that this constitutional requirement was met by authorizing the assessment of such a piece of property at its cash value as a fire screen. The only safety is in refusing to fritter away this valuable protection to the taxpayer by any refined construction. The intent of the framers of this provision is perfectly clear, and we hold that the actual value of the land must be the basis for assessment. See cases cited in note to section 3847, 1 Comp. Laws. Cases cited from other jurisdictions, construing constitutional provisions essentially different from ours are of little aid, and certainly cannot be given the force of authority justifying a distortion of plain English." (p. 197.)

This court's own decisions concerning taxation of national bank shares are very pertinent, holding that under the Act of Congress which permits their taxation by the state at a rate not higher "than is assessed upon other moneyed capital," it is improper to assess them without deduction for the taxpayer's debt, when such deduction is allowed by the state laws from assessments of other property.

*People v. Weaver*, 100 U. S., 539.

*Supervisors v. Stanley*, 105 U. S., 305.

And, generally, assessment of bank shares upon a plan more burdensome than is used in assessing other moneyed capital is illegal.

*Pelton v. Nat. Bank*, 101 U. S., 143.

*San Francisco Nat. Bank v. Dodge*, 197 U. S., 70.

4. The dilemma under the State Constitution, as directly and repeatedly interpreted by the highest court of that state, is plain. The decisions come to this: What "cash value" means, under Article XIV, Section 12 of the Constitution, as to other property, it means under the same section and under Article XIV, Section 10, as to corporate property. There is no possible escape from this simple proposition. If, then, cash value means, as to credits of all persons but corporations, their net value above debts, it cannot mean more as to the credits of corporations. And so, Act 173 violates the State Constitution in taxing appellants on the gross amount of their credits, while all others in Michigan are taxed only on the net value of their credits.

5. It was suggested for the defendant in the Circuit Court that the general provision for deduction of debts from credits, in favor of people not taxed under Act 173, is itself unconstitutional, because "cash value" in the constitution must mean gross value. In other words, the claim was that Act 173 is all right, and the general statutes are all wrong, on this subject of credits. The resort to such a contention demands little attention, and illustrates the desperate character of the case, as to credits, under the state constitution and the state court's decisions.

The claim has three answers:

(1) It neglects the legislative history of Michigan. The tax laws of that state have allowed deduction of debts from credits since 1838; nearly seventy years.

See:

*Rev. Stat.* 1838, p. 76; Title V, Ch. 1, Sec. 3.

*Rev. Stat.* 1857, Title VIII, Ch. 17, Sec. 3; being part of "An Act to provide for Assessing property at its true value, and for levying and collecting taxes thereon," approved Feb. 14, 1853.

*Comp. Laws* 1871, Title VII, Ch. 21, Sec. 3.

*Howell's Statutes* (1882), Vol. 1, p. 1265; being Sec. 2 of "An Act to provide for the Assessment of Property," approved March 14, 1882.

*Howell's Statutes* (1883-1890), Vol. 3, Sec. 1170 a-1; being Act 195 of Public Acts of 1889 (p. 230).

*Act 200 of Public Acts of 1891*, Sec. 2 (p. 280).

*Act 206 of Public Acts of 1893*, Sec. 8; being the first enactment of what is now Sec. 3831, Subd. 6, of the *Comp. Laws of 1897*.

The Michigan Constitution has required assessment of property at "cash value" since 1850, when the present constitution was adopted. (Page 134, *Mich. Comp. Laws of 1897*, Vol. 1; and Sec. 12 of Art. XIV, on p. 116.)

We thus have a legislative interpretation of the constitution for fifty-five years. The people themselves have never moved for a change either of the



statutes or of the constitution. On the contrary, as already stated, when in 1900 the taxing sections of the constitution were amended, to the extent of permitting an average-rate on corporate property, the rule for assessment at "cash value" was continued for universal application. The executive department of Michigan, too, has steadily acted on, and enforced, the rule for deducting debts from credits. And, finally, the judiciary of the state has recognized that rule repeatedly, and never questioned its validity. See the following cases:

*First Nat. Bank v. Township of St. Joseph*, 46 Mich., 526, 530.

*Beecher v. Common Council of Detroit*, 110 Mich., 456.

*Detroit F. & M. I. Co. v. Hartz*, 132 Mich., 518, 520.

*Sears v. Cottrell*, 5 Mich., 251, 262.

*City of Marquette v. M. I. & L. Co.*, 132 Mich., 130.

*Village of Howell v. Gordon*, 127 Mich., 517, 519.

*Bears v. Grand Rapids*, 129 Mich., 572, 575.

*City of Detroit v. Lewis*, 109 Mich., 155, 159.

*Latham v. Board of Assessors*, 91 Mich., 509, 512.

*Davenport v. Auditor General*, 70 Mich., 192, 193.

*Humphrey v. Auditor General*, 70 Mich., 295.

*Attorney General v. Supervisors*, 71 Mich., 16, 22, 26.

Of the force of such considerations, on the very question in hand, the Minnesota Supreme Court says:

"The executive department of the state has always recognized the validity of the law, and the right to make deductions has never been questioned until the present time by any of the officers to whom has been committed the duty of making assessments and collecting taxes. Again, the validity of this statutory provision has always been taken for granted in the judicial department of the state government. It has always been assumed that the practical construction placed upon the constitutional provisions by the legislative and the executive branches was correct; and upon this assumption the courts have acted hundreds of times, in all probability; and in this construction the people of the entire state have acquiesced for nearly two score years. These facts indicate, clearly, in what sense the constitutional provisions relied on by counsel for appellant were understood by all, and what it was supposed they meant. This practical construction cannot be disregarded, but must be allowed to control the interpretation to be placed upon the language by this court."

*State v. Moffett*, 64 Minn., 292, on p. 294.

*Treasurer of Fayette County v. P. & D. Bank*,  
47 O. St., 503.

(2) Such a rule for deducting debts from credits exists very commonly in the United States; and is deemed important to fair taxation. Abundant authority, from many sources, supports it.

*Florer v. Sheridan*, 137 Ind., 28.

*State v. Smith*, 158 Ind., 543.

*Treasurer of Fayette Co. v. P. & D. Bank*, 47  
O. St., 503, 521.

*State v. Moffett*, 64 Minn., 292.

*Arosin v. L. & N. W. Am. M. Co.*, 83 N. W. Rep., 339.

*Pullman State Bank v. Mauring*, 51 Pac. Rep., 464.

*National Bank of Wellington v. Chapman*, 173 U. S., 215.

Statutes providing for deduction of debts from credits, or from moneys and credits, have been construed without question as to their constitutionality in the following cases :

*Morris v. Jones*, 150 Ill., 542.

*Sigfried v. Raymond*, 190 Ill., 424.

*Gray v. Street Commissioners*, 138 Mass., 414.

*Deane v. Hathaway*, 136 Mass., 129.

*Seward Co. v. Cattle*, 14 Neb., 144.

*Jones v. Seward Co.*, 5 Neb., 561.

*Equitable Life Ins. Co. v. Board of Equalization*, 74 Iowa, 178.

*H. I. Co. v. Same*, 75 Iowa, 770.

*Hutchinson v. Board of Equalization*, 67 Iowa, 182.

(3) Even if this court should hold void under the Michigan Constitution the Michigan statutes for deduction of debts from credits, in favor of all but the corporations taxed under Act 173, notwithstanding the existence of such statutes since 1838 and the legislative interpretation of the constitution for fifty-five years as allowing such deduction, and notwithstanding the continuous popular acquiescence in that practical interpretation of the constitution, and notwithstanding the several recognitions of the validity of those stat-

utes by the Michigan Supreme Court, still the railroad taxes for 1902, involved in these suits, would not be helped, because *all taxpayers of Michigan, but those taxed under Act 173, were actually given by the local assessors through the state in 1902 the benefit of deducting their debts from their credits.* The discrimination was actually allowed in the taxation for 1902 between appellants and the other taxpayers of the state. Even if the general rule of deducting debts was unconstitutional, the general assessors did not know it,—indeed, had reason in the legislative, executive and judicial action of the state for years to believe that their duty required the deductions—and so, in assessing property generally, they made the deductions. That action was *general and intentional*; being the result of a supposed legal requirement. Appellants, therefore, were discriminated against in the taxes of 1902, in the matter of assessment of credits,—whether the local assessors acted rightly or wrongly. Appellants' credits, in the supposed view, were assessed at full "cash value," while the credits of all others were assessed, by a conscious, general and intentional practice, at as much less than their "cash value" as debts were deducted from credits. The constitutional rule of Michigan that assessments be uniform was violated just the same, whether the statute for deduction of debts from credits was wrong or merely the action of the local assessors under it was wrong.

And, indeed, if general assessments were made too low, through unauthorized deduction of debts from credits, the result inevitably was to make the "average-rate," applied to appellants' property, too high,—

through wrongful reduction of the aggregate assessments used in computing the average-rate. So that appellants not merely were denied the benefit of the state constitutional provisions for uniform assessment of all property at cash value, but were subjected to an average-rate higher than was lawful.

6. The State Board, in making the assessments on which were based the taxes involved in this litigation, had before them the statements of the railroads giving the amount of their credits, as required by Act of 173, Section 6, Subdivision Ninth; and those statements, of course, were used by the board in making, and were doubtless the chief foundation for, the assessment. It is not to be supposed that the board gave no heed to credits. *They were bound to under the law*, as shown by the explicit provisions to which reference has been made; and the idea cannot be entertained that the board discarded from its consideration elements that the statute called upon them to include. Further than that, it stands out in all parts of the record that, beside direct consideration of the value of the different items of property owned by the railroads assessed, the board pursued *three general methods*; one of them based upon the market prices of the stocks and bonds of the railroad company, another of them based upon gross earnings, and the third based upon net earnings of the company. It is unimportant here in what special way or under what rule of calculation (whether Professor Adams's or Professor Johnson's or somebody's else) the board utilized these data. It is enough to show that *each railroad company's credits influenced the assessment against it under any one of these gen-*

*eral methods*; for the credits, just as much as any other property belonging to a company, must be deemed to have affected the market price of its stocks and bonds; and the credits belonging to any company entered just as much as any other property into the aggregate of its gross earnings or net earnings. The only thing that depends upon the particular method or methods that the board used in making the assessment, and upon the weight attached by the board to the different methods it employed, is the *definite amount* by which any company's credits enlarged its assessment. It is enough for present purposes that those credits enlarged the assessment certainly *in some amount*.

Debts, also, were shown in the returns of the several appellants; and in large amounts. (For illustration, as to both credits and debts, see Michigan Central Record, pp. 266-278.) The bond issues of appellants, shown in their respective returns, were also debts. Appellants in all the cases before the court had, like all railroad companies, of necessity large credits, and also large debts, both funded and current.

There was, therefore, an actual situation before the State Board in which credits had to be, and were, considered and included in the assessment, though how much they raised the assessment it is not possible to say; and in which debts were before the board, but under the law had to be, and were, disregarded. Injustice, therefore, was actually wrought in the assessment, if the statutory discrimination as respects deduction of debts from credits between appellants and other persons in Michigan is unconstitutional; and that injustice has no less been done though the amount of it is not ascertainable.

7. Does the whole statute, Chapter 173, fall because its provision for assessment of credits in full is unconstitutional, or are only the assessments and consequent taxes for 1902 invalid? The entire statute is void; because,

(a) The statute could only be sustained in its other parts in case the State Board were authorized to make the deduction of debts from credits, as other assessors in the state do for other people. In order, therefore, to save the statute, *it is necessary for the court to put into it a new, affirmative, provision* empowering the State Board to deduct debts. That the court cannot do. Such an authority is not in the statute, and the court cannot add it to the statute. This is not a case of merely dropping an unconstitutional part out of a statute; and leaving the remnant in existence. That remnant of Act 173 will not entitle the State Board to do the very thing that is necessary to preserve the statute, viz. deduct debts from credits.

(b) Nor can the statute be saved by dropping out credits entirely from the assessment. That would go beyond the discrimination that exists (which consists only in not allowing debts as an offset to credits to the extent that debts may exist—not in failing to disregard credits altogether, whether debts exist or not); *and would make another discrimination in favor of corporations and against other persons*. Nor is it to be supposed that the legislature would have passed the law at all, with the total omission of credits from taxation.

This question of deducting debts from credits, or of eliminating credits entirely without reference to

debts, is not a small one in the case of railroads and of such other corporations as are taxed in Act 173. Railroad mortgages are debts, and the credits of railroads (through inter-road relations and the great volume of their business) are always very large.

(c) If the statute were to be saved, by the court's making a requirement (which does not exist in the statute itself) for the deduction of debts from credits, the Board of Assessment would have to make such deduction, inasmuch as it would remain the assessor under Act 173; *but the board would have no power to make such deductions.* The board is a creature of this very statute, and its authority therefore must be measured by the statute. The court cannot vest it with new powers.

Before Act 173, railroads were taxed specifically on their gross earnings, and not *ad valorem*. The railroad credits (so far as they were earned through railroad service) were included in gross earnings; and nobody then had any occasion to deduct debts from them. The clauses of the general assessment law of Michigan, providing for the deduction of debts from credits, were inapplicable to railroads and applied only to others taxed after the *ad valorem* plan under the statute containing the provision about debts and credits. Those clauses cannot be extended to railroads until railroads are assessed under the same law as other people, by the local assessors. *It is the local assessors only who are empowered by the Compiled Statutes to deduct debts from credits.* Those statutes do not relate at all to the powers of the Board of Assessment, in doing their work under Act 173.



Nor is the consideration of debts for the purpose of making a proper deduction on their account from credits a merely formal or ministerial act. On the contrary, it involves an important and semi-judicial discretion; like the other work of assessment. Even if the deduction of debts by the board were a ministerial act, the State Board of Assessment would have to be authorized by statute to perform such act; for particular officials cannot do any act which the statutes do not empower those very officials to do. But *the deduction of debts from credits involves much discretion*. In making such deduction, the State Board would have to decide upon (1) the actual existence of the debts and (2) their true amount. Both these questions would very frequently involve such important matters as the honesty or dishonesty of the returns made to the board, or of the witnesses before them; the true interpretation of complicated contracts; and the correct statement of intricate accounts.

(d) The considerations just advanced entirely distinguish from the present case the decision of this court in the case of

*Supervisors v. Stanley*, 105 U. S., 305.

The facts in that case were as follows:

By the New York laws it was provided that

"If any person shall at any time before the assessors shall have completed their assessments make affidavit that the value of his real estate does not exceed a certain sum, to be specified in such affidavit, or that the value of the personal estate owned by him, *after deducting his just debts*, and his property invested in the stock of any corporation or association liable to be taxed therefor, does not exceed a certain sum, to be

specified in the affidavit, it shall be the duty of the board of assessors to value such real or personal estate, or both, as the case may be, *at the sum specified in such affidavit, and no more.*" (page 309.)

The state thereafter passed a statute for assessment *by the same assessors that made the general assessments* of the value of national bank stock; and it was held by the New York courts that this latter statute did not allow deductions of debts from the value of the stock. This court held the refusal of the right to have debts deducted from the value of national bank stock an unlawful discrimination against national bank stockholders, inasmuch as the right of deducting debts from the value of all personal property was accorded to others. The question then arose whether the entire act for taxation of national bank stock was unconstitutional, or only the particular provision forbidding deduction of debts; and the court sustained the law as a whole, though Justice Bradley dissented. (See, particularly, his dissenting opinion in the case of *Evansville Bank v. Brittan*, 105 U. S., 322, which was argued with the former case and followed it.) *But*, two things separate this decision from the case in hand, viz. (1) the same assessors assessed national bank stock and other property, and (2) the action of those assessors in deducting debts was purely ministerial because they had no discretion but to accept under the statute I have quoted the taxpayer's affidavit. The result of the fact that bank stock was assessed by the general assessors was that they had power under the general statute for deduction of debts from personal property (*which applied to those very assessors*) to act in the deduction of debts from the personal property

*just as soon as the special prohibition in the statute for taxation of bank stock was taken out of the way;* but in this case the assessment of railroads under Act 173 is made by the State Board of Assessment, while the assessment of other property is made by the local assessors, and though the local assessors are empowered *by the statutes which apply to them* to deduct debts from credits the State Board is not designated or empowered by any statute to act on that matter. It may be repeated that it does not lie with the court (though it say that railroad property cannot be assessed without deduction of debts from credits) to say what officers of the state can make such deduction. The statutes of Michigan have not conferred any such power on the members of the State Board of Assessment. Further, as already stated, the deduction of debts from credits in Michigan is an act of discretion—just as much, and in the same “*quasi-judicial*” way, as any act of assessment; while the deduction of debts from personal property under the New York law considered by this court was ministerial, because the statute made the affidavit of debts conclusive upon their existence.

On the point of the invalidity of the whole statute a like distinction with that stated concerning *Supervisors v. Stanley*, applies to *Citizens Street Ry. Co. v. Common Council*, 125 Mich., 673. The assessment of street railways, involved in that case, was made by the ordinary assessors; not by any official deriving his power to assess from, and having his functions measured solely by, the section of which a part was held unconstitutional. Indeed, the Michigan Supreme Court

*did hold all of that portion of the section relating to assessment of the property of corporations in a peculiar way to be invalid because of the erroneous rule prescribed for deduction of debts from any personal property.*

(See page 694 of the decision; and page 1196 of the Compiled Laws of 1897.)

This decision of the state court is an authority for the invalidity of the whole system of corporate taxation contained in Act 173, on account of the invalidity of that constituent of the system relating to credits.

(e) Before a court can uphold a statute of which part is unconstitutional, it must be able *clearly* to see that the legislature would have enacted that balance by itself. If there be room for reasonable doubt on that point, the whole law must fall; for the people are not to be put under statutes whose enactment is uncertain. The independence of the different parts of the statute must be made to appear affirmatively and satisfactorily. It cannot be asserted with any confidence, however, that the Michigan legislature would have adopted this average rate plan of taxing the property of railroads and of the other corporations therein enumerated with a further provision (not in the law), for deduction of debts from credits. Many of the taxpayers through the state with whose taxes the statute professes to seek a certain equality have no debts. Many more have no credits from which to deduct. These persons may well be the larger portion of the community. The legislature may well have thought that, *in view of the invariably large debts and credits,*

of railroads this provision was essential to the statute.

8. If the whole statute is void, of course any questions concerning the actual amount in which the credits of any company influenced its assessment, or of the amount in which debts ought to be deducted from the amount of that influence, are immaterial. The whole tax fails, without reference to any such questions. But if the entire law is not invalid, but in some strange way may stand (with the *addition* of a provision empowering the State Board of Assessments to deduct debts from credits), then it becomes pertinent to inquire—Is the entire *assessment* for 1902 of a company having both credits and debts invalid, or can the court sustain a part of the assessment (and consequently a part of the tax) after making corrections of it, by *itself* deducting the proper amount?

(a) The court has no power to do this. The assessing discretion (if anybody has it concerning this matter of deducting debts from credits) belongs to the State Board—not to the court.

(b) The data in the record are not sufficiently definite for ascertainment by the court of the amount that ought to be deducted from the assessment. The court cannot even tell how much the credits shown in the returns of the various companies to the State Board actually raised the assessment. They must be considered to have raised it somewhat; but how much is uncertain. *It will not do to assume that they raised the assessment only by their own full, face amount; for it is unmistakable that the board did not make its assessments by the direct process of valuing each item of*

property and adding those separate values together. On the contrary, the assessments were made chiefly by indirect processes, such as computations on the stock and bond price plan and computations on the basis of gross earnings and computations on the basis of net earnings. Take, for a single instance, the last method. If a company had credits of one hundred thousand dollars and debts of fifty thousand dollars, the net earnings would be increased by these facts one hundred thousand dollars, while they should have been increased only fifty thousand dollars. Here was an error of fifty thousand dollars in the net earnings. How much did that error affect the assessment? That depends upon how net earnings were capitalized. If at the rate of five per cent., the assessment was wrongly increased one million dollars. If the capitalization, however, was made at the rate of six per cent., the resulting error in the assessment was \$833,333. This shows how impossible it is to eliminate from the assessment the error that resulted through failure to deduct debts. The same sort of uncertain error would inhere in the calculations on the basis of stock and bond prices, because they (on the theory of those who believe in such a method) represent the capitalized value of the company's earning power.

It follows, from the powerlessness of the court to correct the assessment (both because the assessing discretion does not belong to it, and because the state has not furnished the data for correction) that the whole assessment must be held invalid; and consequently the whole tax. This is the ground on which

the California Railroad Tax Cases were decided in this court.

*Santa Clara County v. Southern Pacific Ry. Co.*, 118 U. S., 394.

---

Thus far, the question of the discrimination between appellants and other taxpayers in Michigan as to credits has been treated altogether under the State Constitution. It has, however, a further importance under the Federal question of the "equal protection of the laws." In regular order, that aspect of the matter might have been treated earlier in this brief; but the discrimination is so palpable under the Michigan Constitution itself, and in that aspect is so amply demonstrated by the Michigan Supreme Court's decisions already cited, that the Federal view of the matter can best be considered after its treatment under Michigan's own law. What follows is in reference to the Federal side of the question.

The point was directly decided in the celebrated "California Railroad Tax Cases."

*County of San Mateo v. So. Pac. Ry. Co.*, 13 Fed., 145.

*Railroad Tax Cases*, 13 Fed., 722.

*County of Santa Clara v. So. Pac. Ry. Co.*, 18 Fed., 385.

The Constitution of California provided that, in the case of all but railroad property, mortgages should be deducted from the value of the mortgaged property, and the value of the equity only taxed to the owner of the mortgaged property; while in the case of railroads

whose property was under mortgage no such deduction should be made and the railroad should be assessed at the full value of the mortgaged property. It was this discrimination (as made, too, by the state constitution) that Justice Field and Judge Sawyer condemned. Justice Field said:

"The discrimination complained of arises from the different rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value; as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained, the law fixes the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendant's property than upon the property of individuals similarly incumbered, or rather requires the assessor of the defendant's property, in estimating its value to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value. It is not classifying property to provide that the property of certain parties, which has a mortgage upon it, shall be assessed at its value after deducting the mortgage; and that the property of other parties, also having a mortgage upon it, shall be taxed at its full value without any deduction. That is not providing for a different rate of taxation for different kinds of property, but for unequal taxation according to the character of the owner."

(13 Fed., on pages 737, 738.)

Further;

"If we assume that the mortgage in each case was a mere lien or incumbrance on the property affected, and not an interest in it, as the constitution declares it is,



then also is it clear that its elimination as an element in the valuation of the property of the defendants for taxation, while it was considered in the valuation of the property of natural persons, was a discrimination against the former, and led to unequal taxation against them. In neither view, therefore (that is, whether the mortgage were deemed as an interest belonging to another than the mortgagor, or as merely a lien upon the property of the mortgagor) was the assessment valid, and the taxation levied upon it cannot be sustained."

(18 Fed., on pages 491, 492.)

Again;

"The basis of all *ad valorem* taxation is necessarily the assessment of the property; that is, the estimate of its value. Whatever affects the value necessarily increases or diminishes the tax proportionately. If, therefore, any element which is taken into consideration in the valuation of the property of one party, be omitted in the valuation of the property of another, a discrimination is made against the one, and in favor of the other, which destroys the uniformity so essential to all just and equal taxation."

(18 Fed., 394.)

These California cases were taken on appeal to this court; but the decision here, while affirming the judgment below, rested upon the ground that the State Board of Assessment had included in the railroad assessment some property which the statute did not authorize them to assess, but left to assessment by the local assessors.

*Santa Clara County v. So. Pac. Ry. Co.*, 118 U. S., 394.

The same view as was adopted in these California Tax cases has been taken by the Missouri Supreme Court.

*Russell v. Croy*, 164 Mo., 69.

And the reasoning of Justice Field and Judge Sawyer is commended in—

*Nashville, &c., Ry. v. Taylor*, 86 Fed., 168, 179.

*Fraser v. McConway & Torley Co.*, 82 Fed., 257.

*Kingsley v. City of Merrill*, 122 Wis., 185, 205.

---

As said in the statement preceding this brief, the questions arising through systematic under-assessment of property in Michigan by the local assessors will be found treated in the brief of Mr. Angell and Mr. Butterfield.

Respectfully submitted,

LOYD W. BOWERS,  
*Of Counsel for Appellant.*

O. E. BUTTERFIELD,  
*Solicitor for Appellant.*

A. C. ANGELL,  
HENRY RUSSEL,  
ASHLEY POND,  
BENTON HATCHETT,  
*Of Counsel.*

## APPENDIX A.

## ACT NO. 173, MICHIGAN LAWS OF 1901.

An Act to provide for the assessment of the property of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes.

*The People of the State of Michigan enact:*

Section 1. That the Board of State Tax Commissioners created under the laws of this State, shall ex officio constitute a State Board of Assessors, one of whom shall be elected chairman of said board.

Sec. 2. The secretary of the Board of State Tax Commissioners shall be ex officio secretary of the State Board of Assessors without extra compensation, and shall keep a record of all its proceedings in addition to such other duties as may be required of him by said board, and shall devote his whole time to the duties of his office. In addition to the secretary said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act: *Provided*, That the compensation paid for such clerical assistance shall not in any case exceed one thousand dollars for each person employed, per annum: *Provided further*, That said board may employ such other assistance as may be necessary, with the consent of the Governor and the Board of State Auditors. The compensation of the said secretary and clerks, and all other necessary expenses incurred in carrying out the provisions of this act, shall be allowed by the Board of State Auditors upon proper vouchers approved by the chairman and secretary of the board, and paid by the State Treasurer out of the general fund.

Sec. 3. Said board shall have access to all books, papers, documents, statements and accounts, on file or

of record in any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of public records. It shall have like access to all books, papers, documents, statements and accounts, on file or of record in counties, townships and municipalities. It shall have the right to subpoena witnesses, upon a subpoena signed by the chairman of said board and attested by the secretary thereof, delivered to such witnesses, which subpoenas may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment, to be issued by any circuit court in this State, upon proper showing that such witness has been properly subpoenaed, and has refused to obey such subpoena. The person appearing in response to such subpoena shall receive like compensation as is allowed by the statutes of this State to witnesses in the circuit court, to be allowed by the Board of State Auditors upon the presentation of a copy of such subpoena, with the number of days' service and mileage endorsed thereon and approved by a member of said Board or Assessors, or the secretary thereof. The person serving such subpoena shall receive the same compensation now allowed to sheriffs or other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of the board, or by the secretary thereof. It shall have the right to inspect and examine the books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board, and if such corporation, firm or individual refuse to permit said inspection and examination, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall, for each such refusal, neglect or failure, forfeit the sum of five hundred dollars to the State, the sum so forfeited to be recovered in a proper action, brought in the name of the people of the State of Michigan, in any court of competent jurisdiction.

Sec. 4. It shall be the duty of said board to make an

annual assessment upon an assessment roll to be prepared by said board, of the property having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, express companies, doing business within this State, car loaning companies, and refrigerator and fast freight line companies, and all other corporations owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State.

Sec. 5. The term property, as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: *Provided, however,* That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities in which the same may be situate. The term company, corporation or association, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast

freight line company, and any and all other corporations subject to taxation under this act. The term "property having a situs in this State," shall include all the property, real and personal, of the corporations enumerated in this act, owned, used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined.

Sec. 6. The several corporations enumerated in this act, doing business in this State, shall annually, between the first and thirtieth days of June in each year, under the oath of the president, secretary, treasurer, superintendent or chief officer of such company, make and file with the State Board of Assessors, in such form as said board may provide, upon blanks to be furnished by said board, a statement containing the following facts:

#### RAILROAD, UNION STATION AND DEPOT COMPANIES.

The blanks furnished to railroad and union station and depot companies, shall provide for the following information:

First. The name of the company;

Second. The nature of the company, and under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and postoffice address of the chief officer or managing agent of the company in Michigan;

Sixth. The number of shares of capital stock;

Seventh. The par value and market value, or if there be no market value, the actual value, of the shares of stock on the second Monday of April of the year in which the report is made;

Eighth. A detailed statement of the real estate

owned by the company in Michigan, and where situate, and the value thereof;

Ninth. A detailed statement of the personal property, including moneys and credits owned by the company in Michigan, on the second Monday in April in the year in which the report is made, where situate, and the value thereof;

Tenth. The total value of the real estate owned by the company situate outside of Michigan;

Eleventh. The total value of the personal property of the company situate outside of Michigan;

Twelfth. The whole length of their lines, and the length of so much of their lines as is within or is without Michigan, which lines shall include what said railroad companies control and use as owners, lessees, or otherwise;

Thirteenth. A statement of the entire gross receipts of the companies, from whatever source derived, for the year ending the second Monday of April in the year for which the report is made;

Fourteenth. Such other facts and information as said board may require, in the form of the returns prescribed by it.

#### EXPRESS COMPANIES.

The blanks furnished to express companies shall provide for the following information;

First. The name of the company;

Second. The nature of the company and under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and postoffice address of the chief officer or managing agent of the company in the State of Michigan;

Sixth. The number of shares of capital stock, (a) authorized, (b) issued;

Seventh. The par value and market value, or if there

be no market value, the actual value of the shares of stock, together with the total amount of bonded indebtedness, on the second Monday of April of the year for which the report is made;

Eighth. The situation, income and value in detail of its real estate in this State;

Ninth. The total income from and cash value of all its real estate situated outside of this State;

Tenth. A full and correct inventory, at the true cash value, of its personal property, including moneys and credits, within this State;

Eleventh. The true cash value of all its personal property including money and credits without this State.

Twelfth. The whole length and names of railroad lines and water and stage routes over which it did business, and separately, in detail, the portions of such lines and routes within this State, and the portion of such routes over navigable waters of the United States within this State;

Thirteenth. Such other facts and information as may be deemed necessary by the State Board of Assessors, or any member thereof, to the proper assessment of the property of such company.

#### CAR LOANING, STOCK CAR, REFRIGERATOR AND FAST FREIGHT LINE COMPANIES, AND OTHER CAR COMPANIES.

The blanks furnished to car loaning, stock car, refrigerator and fast freight line companies shall provide for the following information:

First. The corporate name of the company;

Second. The nature of the business of said company, and under the laws of what State or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The location of its principal office in the State of Michigan, together with the name and ad-



dress of the chief officer or managing agent of the company in Michigan;

Sixth. The total number of cars and rolling stock of any such corporation run over or operated upon any line or lines of railroad within this State each day during the entire year preceding the date of making and filing such report;

Seventh. The cost of construction of each of said cars;

Eighth. The length of time the same has been in service;

Ninth. The cash value of each of said cars so operated and run in this State, at the time of making and filing such report;

Tenth. And such other and additional information as may be deemed necessary by said board, or any member thereof, to the proper assessment of the cars of such company in this State in accordance with the provisions of this act and to the performance of the duties imposed upon it hereby.

Sec. 7. Blanks for making the statements provided for in section six shall be furnished to such companies on making application to said board: *Provided*, That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other State officers. In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the board shall inform itself as best it may on the matter necessary to be known, in order to discharge its duties with respect to the assessment of the property of such company. Any company which shall refuse or neglect to make the report required by this act within the time specified, shall be subject to a penalty of five hundred dollars for each day of the continuance of such neglect or refusal to file said report, to be recovered in a proper action brought in the name of the people of the State of Michigan in any court of competent jurisdiction.

Sec. 8. Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of December in each year, it shall be the

duty of the said State Board of Assessors, to prepare an assessment roll, as provided in section four of this act, upon which they shall assess at the true cash value on the second Monday of April of the year in which the assessment is made, all the property of the companies herein enumerated subject to taxation under this act, which said assessments shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and the true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of such companies filed in the office of any officer of this State, and such other evidence as may be obtainable bearing thereon. In determining the true cash value of the property of railroad and union station and depot companies which own, lease or operate lines partly within and partly without this State, the said board shall be guided, in ascertaining the property subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without this State. In determining the cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebtedness of such express company. From the amount so obtained and determined, said board shall deduct the actual value of all real estate owned by it as ascertained by said board, and the actual value of all its personal property which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: The said board shall then divide the amount as obtained above by the total number of miles of railroad, stage, water and other routes over which the company did busi-

ness, to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this State, exclusive, however, of the number of miles of water routes over the navigable waters of the United States within this State, to which result shall be added the value of all real estate owned by such express company in this State, as determined by said board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company subject to assessment and taxation in this State. In ascertaining the cash value of the property of car loaning, stock car, refrigerator, fast freight line and other car companies subject to taxation under this act, they shall ascertain the average number of cars used in this State during the year preceding the date of the filing of the report mentioned in the preceding section, such average to be determined by dividing the total number of cars so used or operated within this State during said year by the total number of days on which said cars were so used or operated within this State; and they shall also ascertain the average cash value of such average number of cars, and from said data the total valuation shall be determined and shall be the assessment against the property of said corporation.

Sec. 9. Upon said assessment roll, after the names of each of the companies assessed thereon, shall be placed a general description of the properties of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. In the case of railroad, union station and depot companies such general description may be as follows: "Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a State Board of Assessors." In the case of car loaning, stock car, refrigerator and fast freight line and other car companies, the following general description may be used: "Cars subject to taxation by a State Board of Assessors." In the case

of express companies, the following general description may be used: "Property subject to taxation by a State Board of Assessors." In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of said companies so assessed.

Sec. 10. On the third Monday of December in each year, it shall be the duty of the State Board of Assessors to meet at the State capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll, may subpoena witnesses as provided in section three of this act and have such hearing as may be deemed necessary. In case it shall appear or be made to appear to the members of said board, acting in review for assessment purposes, that the property of any corporation subject to taxation under the provisions of this act shall have been omitted from said assessment roll, it shall place the same thereon and make the assessment thereof as required in sections eight and nine of this act: *Provided*, That any such assessment shall take place in time to allow five full days for the review of the same before the expiration of the time herein provided for the completion of the review. After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valua-

tion upon which the tax upon said property shall be levied and spread as herein provided. After said board shall have completed the review of said roll, a majority thereof shall certify under their hands officially, and spread on said roll, a certificate to the effect that the same has been acted upon and reviewed in accordance with law, which certificate shall state all the alterations, changes, corrections and additions made in or to the assessment or valuation of the property appearing on said roll.

Sec. 11. It shall be the duty of the county clerk in each county in this State, as soon as possible after the equalization of the board of supervisors of his county of the assessment rolls of the several municipalities therein, and not later than the first day of November in each year, to make a report, duly certified, to the State Board of Assessors, of the record of such equalization and of the record required to be made under section thirty-seven of the general tax law, being section three thousand eight hundred sixty of the compiled laws of eighteen hundred ninety-seven, as appears upon the records of such board of supervisors, which report shall, among other things, contain a statement of the amount of ad valorem taxes to be raised in the several municipalities of such county for State, county, municipal, township, school and other purposes, and a statement of the aggregate valuation of the property in each of said several municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It shall be the duty of the supervisor or other assessing officer of cities and villages in this State governed by special charters, which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purposes of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make, within the time above limited, a properly certified report to the State Board of Assessors of all ad valorem taxes raised in any of said municipalities, which have not been reported to the board of supervisors for the purposes of equalization

and review. In case any county clerk or any supervisor or assessing officer shall neglect or fail to make the report by this section required, within the time limited, the said State Board of Assessors shall inspect and examine, or cause an inspection and examination of the records of said board of supervisors, or in cities affected by this section, an examination of the records of the proper officer, for the purpose of procuring the information required for the purpose of arriving at the average rate of taxation in this State; and the said board, in addition thereto, may require such reports on blanks which it shall prepare and furnish therefor, from all county, State and municipal officers, as it shall deem necessary to the accomplishment of the purpose of this act. Any county clerk, supervisor, or assessing officer who shall fail to make the report required by this section shall be subject to a penalty of one hundred dollars, to be recovered in a proper action in the name of the people of the State of Michigan, in any court of competent jurisdiction.

Sec. 12. As soon as the reports required by the preceding section to be filed have been filed, or the information therein required to be procured shall have been procured, and not later than the fifteenth day of December in each year, the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined.

Sec. 13. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties. After the completion of said tax roll, and prior to the first day of February in each year, the said board shall attach thereto a certificate signed by the members of the board, or a majority

thereof, which shall be as follows: "We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal and other purposes, levied through the State during the present year, as determined by us. The said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer. The said taxes shall be payable on the first day of March following the assessment and levy thereof, and shall be in lieu of all taxes for State and local purposes, not including special assessments on property particularly benefited, made in any county, city, village or township. All taxes not paid before the first day of April in the year in which the same are payable shall bear interest at the rate of one per cent. per month thereafter. The taxes so extended against said companies shall become forthwith a debt due from each of said companies to the State, and shall constitute a lien upon all the property of said companies, real, personal and mixed, from the time of the extension until the payment thereof, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided. The State Board of Assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the State Board, or a majority of them, commanding the Auditor General to collect the several sums mentioned in the last column of such roll, and being the sum for which the



said company was assessed and was liable to pay for a tax upon its property under the provisions of this act for the purposes provided for in this act; and the said warrant shall authorize and command the Auditor General, in case any corporation named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of such sale as provided for in the general laws of this State for the sale of property seized for taxes and offered for sale: *Provided*, He may bring an action in the name of the people of the State of Michigan in any court of competent jurisdiction in the State of Michigan, or in any other state, for the enforcement of said lien, and upon recovery of judgment or decree therein the same may be collected by execution, levy and sale, as in other cases, upon judgments in courts of record.

Sec. 14. If any court of competent jurisdiction shall adjudge that any tax levied under the provisions of this act is illegal on account of any irregularity or informality in the determination of the average rate of taxation required to be ascertained and determined by said State Board of Assessors, or for the reason that such average rate has not been ascertained and determined according to law, it shall be the duty of the said State Board of Assessors, whether any part of the taxes assessed and levied have been paid or not, to redetermine and reascertain the average rate of taxation throughout the State in accordance with law, and when such redetermination and reascertainment has been had, to make a duplicate of the original assessment roll and to extend the taxes thereon according to such redetermined and reascertained average rate, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as an original assessment made in accordance with law. All proceedings on the redetermination and reascertainment of such average rate and for the exten-



sion and collection of taxes upon said duplicate assessment roll shall be conducted in the method originally provided for, so far as may be. Whenever any sum or part thereof levied upon any property subject to taxation under this act so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment upon said property, and the reassessment to that extent shall be deemed to be satisfied.

Sec. 15. No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any court of this State on account of any irregularity in any assessment or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this State is in accordance with the constitution and statutes of this State.

Sec. 16. All taxes collected under this act shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State debt, in the order herein recited, until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund; and such taxes as are collected under the provisions of this act shall be treated and disbursed as specific taxes are now treated and disbursed: *Provided, however,* That if any of the corporations, companies or associations herein named were not paying specific taxes to this State on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the State.

Sec. 17. The first assessment under this act shall be

made as herein required in the year nineteen hundred and two. Nothing herein contained shall be deemed a waiver or affect the collection of the specific taxes required to be paid by the companies hereby affected, on the first day of July in the year nineteen hundred and one, and on the first day of July in the year nineteen hundred and two, under the general laws upon the property or business of such companies operated within this State. The existing laws providing for the collection of such specific taxes shall be continued in force until the collection and payment of all taxes levied thereunder for the year nineteen hundred and one and previous years.

Sec. 18. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each.

Sec. 19. If any person, company, association or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any member of said board, during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the State the sum of ten thousand dollars for each such offense, to be recovered in an action in the name of the people of the State of Michigan, in any court of competent jurisdiction. And the recovery of such fine under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

Sec. 20. All other acts or parts of acts, whether contained in any acts for the incorporation of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, or in any other law of this State, so far as such acts or parts of acts are inconsistent with

this act, and no further, are hereby repealed, except as herein expressly stated: *Provided, however,* That all rights which the State now has under any of said acts, for taxes or penalties, shall not in any way be affected by this act, and shall not constitute a bar to any prosecution or recovery on account of such taxes or penalties.

Approved May 27, 1901.

## APPENDIX B.

## MICHIGAN CONSTITUTIONAL PROVISIONS.

(In form previous to amendment of 1900.)

## ARTICLE X I V.

Section 10. The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from banking, railroad, plank road and other corporations hereafter created.

Section 11. The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.

Section 12. All assessments hereafter authorized shall be on property at its cash value.

Section 13. The legislature shall provide for an equalization by a state board in the year one thousand eight hundred and fifty-one, and every fifth year thereafter, of assessments on all taxable property except that paying specific taxes.

Section 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

(In form after the amendment of 1900.)

#### ARTICLE XIV.

Sec. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific State taxes in section one of this article.

Sec. 11. The legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes.

Sec. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a State Board, on all taxable property, except that taxed under laws passed pursuant to section ten of this article.

## POINTS CONSIDERED.

### I.

The extent and character of the undervaluation of property, other than that included in the Act in question .....	3
---	---

### II.

The property of appellants assessed at full value....	20
---	----

### III.

Appellant's right to relief based upon the Constitution of Michigan .....	61
---	----

### IV.

Appellant's rights to relief based upon equitable principles and judicial construction of the Constitution of the United States .....	62
---	----



# Supreme Court of the United States

Nos. 397 and 462 to 487.

---

OCTOBER TERM, 1905.

MICHIGAN CENTRAL RAILROAD COM-  
PANY,

*Appellant.*

vs.

PERRY F. POWERS,

*Auditor General of the State  
of Michigan.*

26 other cases, numbered from 462  
to 487, inclusive.

**BRIEF OF O. E. BUTTERFIELD FOR THE RAILROAD  
COMPANIES, UPON THE QUESTIONS GROWING  
OUT OF ALLEGED UNDERVALUATIONS UPON  
LOCAL ASSESSMENT ROLLS, BY REFERENCE  
TO WHICH THE RATE OF TAXATION SOUGHT  
TO BE IMPOSED UPON THE PROPERTY OF AP-  
PELLANTS, IS COMPUTED.**

---

The briefs and arguments on the constitutional questions involved in these cases will make plain to the Court the general scheme of the *ad valorem* tax law in question; will particularly call attention to the fact that the rate of taxation sought to be imposed upon the property of the appellants is the average rate of taxation levied upon property other than that included in the act (Act 173 of the Laws of 1901) for state, county, township, school



and municipal purposes; and will point out that the Supreme Court of the State of Michigan has held that this average rate must be computed by dividing the total taxes levied, for the purposes mentioned, by the total assessed value of the property upon which they are levied, without taking any account of the question whether such property is assessed at its true cash value or at something less. (See Appendix "A.")

We submit that the record shows that such other property was assessed for the year in question at something less than what the assessing officers of the state believed to be its true cash value; that no corresponding reduction was made in the valuation of the property of appellants; and we claim that these facts amount to a practical violation of the provisions of the Constitution of the State of Michigan (Art. XIV., Secs. 10, 11, 12, 13. See Appendix "B") requiring all assessments to be at cash value according to a uniform rule, and entitle appellants to a decree reducing the tax in question to such an extent as will bring about an equitable distribution of the burden as between their property and the property in the state other than that included in said act.

---

If the Act is invalid, this question will go out of the case. If the Act is held valid, we submit it merits consideration and to it this brief is confined.

---

We have made four subdivisions of the subject, as follows:

1. The extent and character of the undervaluation of such other property.
2. The full valuation of appellant's property.
3. Our right to relief, resting upon the Constitution of the State.
4. Our right to relief, resting upon equitable principles and judicial construction of the Constitution of the United States.

These points are raised upon the record by the 12th assignment of error. (R., 858).

## I.

**THE EXTENT AND CHARACTER OF THE UNDER-  
VALUATION OF SUCH OTHER PROPERTY.**

---

It Appears from the Uncontradicted Testimony that Property, Other than that Included in the Act, upon which Ad Valorem Taxes were Assessed for State, County, Township, School and Municipal Purposes was listed upon the Local Rolls, by Reference to which the Rate Sought to be Imposed upon the Property of Appellants was Computed, at only 82.7 per cent of its True Cash Value, and that such Undervaluation was Intentional and General.

---

In the statement of this proposition, we use the word "uncontradicted," and we wish at the outset to call particular attention to the fact that the testimony offered by the appellants upon this point is absolutely uncontradicted by any witness called to testify in behalf of the Auditor General. We bespeak for it, therefore, a sympathetic consideration and a favorable construction.

---

We will treat this particular sub-division in two parts, to-wit: (1) the extent of the undervaluation; (2) its intentional character.

---

1. *The extent of the undervaluation.*

There are in the State of Michigan about 1,300 local assessment districts. Each has an assessment roll prepared by its local assessor. Upon each assessment roll, the law requires the assessor to write a list of all the property in the district subject to local assessment. Each district has its local board of review, to which its assessment roll as prepared by the local assessor or board of assessors is submitted, and before which persons interested have a right to appear and be heard. This board of review may make such changes on the face of the roll as its discretion may dictate. The constitution, and every statute upon the subject, requires that when the certificate of this board of review is attached, the roll shall embrace a list of all the taxable property in the district, appraised at its true cash value.

---

Ever since the adoption of the Revised Statutes of 1838, it has been recognized by the legislative department of the State of Michigan that, in spite of these provisions of the law that property shall be valued on the assessment rolls at its true cash value there would be a disposition on the part of local assessing officers to put down something less than the true cash value, and, therefore, in the first revision of the statutes after the admission of the state into the union, an equalization was provided for by a county board of supervisors and such a provision has been retained in the law from thence hitherto. (Compiled Laws of 1897, Sec. 3857. See Appendix "C"). There are 83 counties in the state.

---

It is the object of this equalization to obtain a just basis for the apportionment of the state and county taxes among the several assessment districts. (Boyce vs. Sebring, 66 Mich., 217). The county board makes no change in any of the valuations appearing on the assessment roll. It determines simply whether, as between the different assessment districts, the local assessing officers have appraised the property at its true cash value, or at the same proportion thereof. They enter upon their records what they find to be the true value of the property in each assessment district, and upon such valuation the state and county tax is apportioned to the assessment districts. It is obvious that if every assessing officer listed the property in his district at its true cash value as required by law, there would be no necessity for any other equalization.

---

When the present constitution was adopted in 1850, the fact that local assessing officers were not in the habit of listing property on the rolls at its cash value was again recognized by a provision for a state equalization, among the counties, once in five years. (Constitution, Article XIV., Sec. 13. See Appendix "B;" see also Appendix "D" for the Act governing the State Equalization.)

The state board has nothing to do with individual assessments. It is required to determine "whether the valuation between the several counties is equal and uniform according to location, soil, improvements, production and manufactories, and also whether the personal estate of the several counties has been uniformly estimated according to the best information which can be derived from

the statistics of the state, or from any other source." (Secs. 129 to 137 of the Compiled Laws. See Appendix "D.") If they find inequality, "they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in said county or counties such percentage as will produce relative equality and uniform valuations between the several counties in the state." There is no provision expressly requiring the equalization by the state board to bring the valuation of each county up to a cash basis, but it is obvious that such a board would have no function to perform if the local assessors listed the property at cash value.

The board met in the summer of 1901, the year preceding the assessment in question in these cases. At that meeting, the county officers were invited to present arguments respecting the treatment to be accorded them in the equalization. Hon. Chas. A. Blair, now one of the justices of the Supreme Court of the State, formerly and at the time this litigation was commenced, Attorney General of the State, but at the time of the meeting of the board of equalization a distinguished citizen of Jackson County appeared before the board and distinctly contended that "it is not the duty of the board to undertake to ascertain what the true cash value of a dollar's worth of property is in a single county in the State of Michigan" (R., 282). The Attorney General, however, advised that they must equalize at cash value (R., 286).

---

For some years prior to 1899, a popular demand for equal taxation occupied a prominent place in the politics of Michigan. The agitation was at first directed against the old system of specific taxation of railroad companies and certain other corporations which had been in force since the adoption of the constitution of 1850 (R., 357), but as the agitation continued, it was pointed out that if railroad property was to be taxed upon an *ad valorem* basis at the average rate paid by other property, attention should be given to the well-known fact that other property was not assessed at its true cash value (R., 364). In his message to the regular session of the legislature of 1899, the governor called upon the legislature to readjust "the assessment laws of the State in order that all property within the State shall be placed upon the assessment roll at its true value" (R., 364), and at that session, the legislature passed Act 154 of the laws of 1899 providing

for the establishment of a state board of tax commissioners (see Appendix E).

Act 154 of the Laws of 1899 (R., 365), was, in form, an amendment to the general tax law, and a glance at its provisions will plainly show that the legislature recognized the fact that the practice was general among local assessing officers to list property upon the assessment rolls at something less than what they believed to be its true cash value; and by Subdivision 9 of Section 150 of the Act, the commission created by it was expressly required to determine the true value of the property in the State subject to local assessment, and to report that value to the legislature; and, upon the theory that the system of *ad valorem* taxation was to be inaugurated for railroad property, this board was called upon to report at the same time to the legislature the true cash value of the railroad property and, to the end that the legislature might be fully advised as to the extent of the inequality that was alleged to exist between the taxation of railroad property and other property, this board was required to report the rate of taxation paid by such other property upon its true cash value, and also the rate of taxation that the railroad companies were paying upon the true cash value of their property. The railroad companies were paying specific taxes on gross earnings but the board was to find out what rate upon the value of the property the specific tax amounted to.

At the same session of the legislature in 1899, a bill known as the Atkinson Bill was passed, providing for the assessment of property of railroad companies at its true cash value by a state board of assessors and the taxation thereof at the average rate levied upon other property. The bill was much like the Act in question in this case, but it was held unconstitutional by the Supreme Court of the State in a decision handed down during the year 1899, and it was made plain by the decision that the average rate plan of taxation could not be adopted without an amendment to the constitution (R., 365).

*Pingree vs. Aud. Gen.*, 120 Mich., 95.

---

In December, 1899, the Governor called a special session of the legislature, and recommended the passage of a joint resolution submitting to the people an amendment to the constitution to authorize the taxation of corporate

property upon the average rate plan, etc. (R., 364). The legislature failed to adopt the recommendation. In October, 1900, the Governor called another special session of the legislature, and made a similar recommendation (R., 367). In his message to the special session in October, 1900, the Chief Executive stated that the taxable property in the State subject to local assessment was assessed at about 63 per cent of its true cash value (R., 236).

In response to the call last referred to, the legislature submitted to the people an amendment to the constitution authorizing the assessment of corporate property at its true cash value and the taxation thereof at the average rate of taxation levied upon other property. The amendment was adopted at the election held in November, 1900, and reads as follows: (We have italicized the changes.)

#### "ARTICLE FOURTEEN.

"Sec. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. *The legislature may provide for the assessment of the property of corporations, at its true cash value, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific State taxes in section one of this article.*

"Sec. 11. The legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: ~~Provided~~, *That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes.*

"Sec. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legis-

lature shall provide for an equalization of assessments by a State board, on all taxable property, *except that taxed under laws passed pursuant to section ten of this article.*"

---

We call attention in passing to the fact that while Act 154 of the laws of 1899, hereinbefore referred to, made provision for the supervision by a state board of the work of the local assessors to the end that all property might be listed on the rolls at its true cash value, and while the main purpose of the amendment to the constitution was to provide for the assessment of corporate property at its true cash value, it was still assumed that it would be practically impossible to bring the other property up to its true cash value on the local rolls, and so the provision for a state equalization once in five years was retained in Section 13. No provision, however, was made for any equalization between corporate property assessed by a State Board and other property, except the general provision that all must be assessed at its cash value.

---

At the regular session in January, 1901, Act 173, the Act in question in this case was passed. (See Appendix F). It made the commission appointed under Act 154 of 1899, ex-officio a Board of Assessors to value Railroad Property. The first assessment of railroad property was made as of the second Monday in April, 1902, and that is the assessment involved in this case. The Board of Assessors certified that they had put down upon the assessment roll the true cash value of the railroad property (R., 3). This is the allegation in the bill of complaint and it is admitted by the answer (R., 25). When they came to the question of the average rate, they acted in accordance with the advice of the Attorney General of the State (R., 135). They construed the constitution and the Act as calling upon them to determine for themselves the true cash value of the other property without regard to the valuation appearing upon the local rolls. They divided the total tax levied upon such property for the purposes mentioned in the Act by what they found to be such true cash value, and they found such true cash value to be 1715 million dollars, which was some 296 million dollars more than the aggregate of the assessed valuations (R., 346). The assessed value was 1418 million dollars in round numbers (R., 62, 120). This was 82.7 per cent of the true cash value as determined by the Commission (Rec., 151).



We submit that this determination by the Board that the true cash value was 1715 million dollars, of which the assessed value was only 82.7 per cent is *prima facie* evidence of the fact for the purposes of this case, and it stands uncontradicted. It was the duty of the Board to make the determination, and every member of the Board who took part in the proceedings testified that it was a deliberate and unanimous conclusion. This appears by the certificate above referred to, and by the testimony of the members of the Board (Rec., 62, 77, 93, 126, 147). There was no other board or body in the State in the year 1902 upon whom was imposed the duty to determine the true cash value of all the property in the State subject to local assessment, and we submit that such a determination by this Board, acting in its official capacity, is evidence of the fact that the property of the State, other than that included in Act 173, was assessed in the year 1902 at only 82.7 per cent of its true cash value.

It is true that this is an average, but in view of the provision of the Act in question that the rate of taxation to be imposed upon the railroad property shall be the average rate imposed upon such other property, the average undervaluation is the proper basis for judicial action.

---

The State Board of Equalization met, as we have already seen, in 1901, and although urged by the advice of such men as Mr. Justice Blair that they had nothing whatever to do with the question of the true cash value of the property, added a substantial sum to the valuation of every county and found the total to be 1578 million dollars in round numbers as against the local assessment in that year of only 1328 million (R., 61, 334). It thus appears that the total assessed valuation for 1902 of 1418 million dollars did not reach the aggregate valuation fixed by the State equalization board in the previous year by 160 million dollars. The Board of Tax Commissioners advised the State Board of Equalization in 1901 that the true cash value of the property upon the local rolls that year was 1702 million dollars (R., 76).

It was argued by the counsel for the defendant in the court below that the figures fixed by the State Board of Equalization were not intended to be the true cash value but only relative valuations, but we submit such an in-



ference is unjustifiable in the face of the opinion of the Attorney General of the State given to the Board of Equalization at its request, to the effect that it was their duty under the law to equalize upon the cash value (R., 286).

The Attorney General concluded his opinion in these words:

"For all these reasons, I would advise the Board of Equalization that it is its duty according to its best judgment and information so to equalize the various aggregate assessments that are submitted to its consideration and review that the result may express as nearly as possible the actual cash value of the taxable property of each county in the State; and for it to knowingly do otherwise would in my judgment be a gross disregard of the duties that are imposed upon it by the Constitution and laws of this State" (R., 286).

---

Counsel for the defendant appeared in the court below to admit the force of this finding of the Board but sought to impeach it by a study of the nature of the information upon which the finding was based. We submit such argument should be unavailing. Such a Board is not held to the strict rules of evidence applicable to a proceeding in court. "In making inquiry and collecting the facts, they are not bound by the strict rules which govern ordinary judicial proceedings."

*People vs. Barker*, 144 N. Y., 94, 103.

The learned counsel for the defendant in the court below stated in his printed brief and contended upon the argument that the estimate made by the Governor in October, 1900, that the other property of the State was assessed at only 65 per cent of its true value referred to the assessment of 1899. The counsel then alluded to the total assessed valuation in 1899, and, treating that sum as 65 per cent, computed the true cash value to be 1483 million dollars in round numbers, and then proceeded to show that the assessed valuation had been raised to 1418 millions in 1902 which was much more than 82 per cent of the true cash value as thus estimated.

This argument is based upon erroneous premises. The assessment which the Governor estimated as 65 per cent of the true value was that of the year 1900, and not that of 1899 as stated by the learned counsel. The following is the language of the Chief Executive taken from the Journal of the House of Representatives of the State of Michigan for the extra session, October 10th to 15th, 1900:

"The following is a table showing: (1) the full values of the tangible property of the Ann Arbor Railroad and the Detroit, Grand Haven & Milwaukee Railroad made by Professor Cooley; (2) 65 per cent of the full value of the tangible property; (3) amount of taxes paid for the year 1899, under the present law taxing earnings; (4) the actual rate of taxation as based upon the valuation of the tangible property (at 65 per cent of the full cash value of the tangible property) that is now being paid under the system of taxation upon earnings; (5) amount of taxes which the railroads would pay, at 2 per cent of the valuation of the tangible property (at 65 per cent of the full cash value); and (6) amount of taxes which the railroads would pay at 2 per cent of the full value of the tangible property.

"In these comparisons, I use 65 per cent of the full cash value, because that is the average of assessments throughout the State, according to a computation made by a member of the State Board of Tax Commissioners. The average rate of taxation in the State is nearly  $2\frac{1}{2}$  per cent (also computed by a member of the Tax Commission), but I have used 2 per cent in showing what taxes these railroads should pay if they were assessed upon cash value, at the same proportion of full value, viz., 65 per cent, as other property in the State is assessed, and at the same rate as other property in the State is taxed. The official computation of the Tax Commission upon these two points may be completed before this session ends.

*Comparison of Taxes—Value of Tangible Property.*

	Ann Arbor Railroad.	Detroit, Grand Haven & Milwaukee.
Full value tangible property.	\$5,700,161.00	\$5,589,015.00
65% value tangible property..	3,705,105.00	3,632,859.00
Taxes on earnings paid 1899.	39,406.75	31,610.03
Rate of tax, now being paid on earnings if assessed at 65% cash value .....	.0106	.0087
Taxes at 2% would pay if as- sessed at 65% cash value...	74,102.00	68,107.00
Taxes at 2% would pay if as- sessed at full cash value..	114,003.00	104,780.00"

It will be noted that he says "(3) amount of taxes paid for the year 1899 under the present law taxing earnings," and in the table there is a column headed "Taxes on earnings paid 1899," but the figures given in that column are the taxes paid on the earnings of 1899, due and payable, however, in June, 1900, as clearly appears from page 256 of the report of the Commissioner of Railroads for the year 1900, published by authority.

Professor Adams, the statistician of the Interstate Commerce Commission, who made, as we shall see hereafter, a computation of the value of railroad property in 1900, assumed that other property was assessed at only 65 per cent of its true cash value in accordance with our understanding of the Governor's message. (R., 526, 527.)

Applying the argument of the learned counsel to the correct premises, we find that the other property was assessed in 1900 at 1317 million dollars in round numbers (R., 355), which is 65 per cent of about 2 billion dollars of which the assessed valuation in 1902 of 1418 million dollars was only 70 per cent and a fraction.

---

Much space was devoted in argument in the briefs in the court below to the testimony that wherever the tax commission in its reviews found that the local assessors had not assessed the property at cash value, they raised the assessments; but there is very little force in this contention, because it appears by the uncontradicted evidence that the only general reviews that were held prior to the assessment of 1902 in question were confined to seven counties out of 85 and two cities. (R., 66).

## 2. *The Character of the Undervaluation.*

*We Claim that the Record Shows that this Undervaluation was Intentional and General and of Such a Nature as to Entitle the Railroad Companies to Relief.*

After the State Board of Assessors had computed the average rate of taxation levied upon other property for the purpose of finding the rate to be imposed upon the railroad property, the Board of Education of the City of Detroit filed a petition for a mandamus to compel a re-determination of the average rate, upon the theory that the Board of Assessors had no discretion in the calculation to take for a divisor any other sum than that which appeared by the local assessment rolls to be the assessed value of the other property, and the Supreme Court of Michigan so held (*Board of Education of the City of Detroit vs. State Board of Assessors*, 133 Mich., 116), but in the answer to an order to show cause in that proceeding, which was signed by four out of five members of the Board, the same being all the members who took part in the assessment, appears this paragraph:

"That, as this respondent believes and charges the truth to be, the undervaluation of the property of the State subject to ad valorem taxes for State, county township, school and municipal purposes throughout the State was not the result of accident, inadvertence, or mistakes in judgment, but that such undervaluation of such property was, in a large number of the municipalities of the State, intentional and general, and that this practice of undervaluation has been in vogue in this State for a great number of years; and that if the court desires to examine the data upon which the foregoing statements are based it will be furnished." (R., 29.)

---

Section 151 of Act 154 of the Laws of 1899 as it then stood required the Board of State Tax Commissioners to make an annual report to the Governor, setting forth the workings of the Commission during the preceding year and containing the findings and recommendations of said Commission in relation to all matters of taxation. In the annual report for the year 1902, published by authority, marked Exhibit C in the Record on page 17 of the report (R., 126) appears this language:

"It would be impossible to enumerate the questions raised and the matters discussed at those meetings, but with them all we emphasized the importance of listing all property subject to taxation, and assessment of all at its cash value, endeavoring to point out that equal taxation and uniformity of assessment can be accomplished in no other way; that while the old plan of assessing property at a percentage of its value prevails and each supervisor uses his own judgment of the percentage to be applied in his district there is danger of as many different percentages as supervisors in a county, and the property of no two counties would be assessed by the same standard of value."

On page 36 of the same report appears the following:

"They" (meaning the local assessors) "rarely claimed that assessments of property had been made at cash value, as the law clearly and forcibly directs, but in fact admitted the prevalence of the plan of assessing property at a percentage of its value, one claiming a high percentage for his county and another admitting a lower and confessing unlawful assessments in this respect, attempted to justify by pointing to equally bad conditions in other counties." (R., 146.)

Commissioner Sayre testified that this last statement was warranted by the experience of the Board. (R., 146.)

---

Witness A. F. Freeman, a member of the State Board of Tax Commissioners from the time of its organization, sworn for the complainant, testified that the statement contained on page 17 of Exhibit C to the effect that the old plan of assessing property at a percentage of its value still prevails was true (R., 126); that in the year 1902, the supervisors often admitted undervaluation (R., 124); that at least 500 supervisors admitted to him an intentional undervaluation (R., 126); that at the meeting of the State Board of Equalization in 1901, at which representatives from nearly all the counties in the State were present these representatives rarely claimed that the property in their respective counties was assessed at its true cash value, but admitted the prevalence of a plan of assessing property at a percentage of its value (R., 121); that the reason was that each assessing officer

sought to reduce the total valuation of his district as low as possible in order that it might not fare worse than its neighbors in the apportionment of the State and county taxes. (R., 123, 124.)

---

The witness Ira T. Sayre, a member of the Tax Commission, sworn for the complainants, testified that the statements in the report of the Commission to the effect that the plan of undervaluation prevails, and that the representatives of the counties before the State Board of Equalization admitted the prevalence of the plan of assessing property at a percentage of its cash value were true (R., 146); that four-fifths of the supervisors who had been interviewed in his presence admitted intentional undervaluation (R., 150); that the statements in the return to the order to show cause in a suit brought by the Board of Education to the effect that the undervaluation of the property of the State subject to *ad valorem* taxes for state, county, township, school and municipal purposes throughout the State was not the result of accident, inadvertence or mistakes in judgment, but that such undervaluation of such property was, in a large number of municipalities of the State intentional and general, and that this practice of undervaluation has been in vogue in this State for a great number of years was true (R., 146); that in his opinion, the undervaluation was quite general throughout the State (R., 146); that such undervaluation was intentional to the extent that each supervisor watched his neighbor and endeavored to get his valuation as low in proportion to the true value as his neighbor did (R., 146); that it was his judgment that cash value was not being used generally as a basis of assessment (R., 147).

---

The witness William T. Dust, a member of the Tax Commission, sworn for plaintiffs, testified that the statement contained in the report of the Commission to the effect that the plan of undervaluation still prevails, was true (R., 69); he attempted to qualify somewhat the language used (R., 70), but he admitted having sworn to the answer in the School Board case, in which it was stated that the undervaluation of the general property of the State was not the result of accident, inadvertence or mistakes in judgment, but was, in a large number of municipalities of the State, intentional and general and that the practice of undervaluation has been in vogue in

this State for a great number of years (R., 71). It will appear from a reading of the testimony that Mr. Dust was an unwilling witness, but he finally admitted (R., 72) that the statement contained in the answer in the Board of Education case was true. He further testified that in January, 1903, nearly a year after the time of the assessment in question in these cases, the assessments of general properties were still below the cash value (R., 70). He gives it as his opinion that in a large number of municipalities of the State, the undervaluation is intentional and general (R., 72), and states that assessors admitted at official meetings of the Board that they undervalued the property in their respective districts (R., 73).

---

The witness Jas. C. McLaughlin, another member of the State Board, sworn for complainant testified that the plan of assessing at a percentage of the true value still prevails, and that the general properties of the State were still, at the time he gave his testimony in 1903, assessed many millions below their true cash value (R., 94). He further testified that in his judgment, all the counties in the State were assessed below the true cash value (R., 94); he admitted having signed the answer in the mandamus case, in which it was stated that the undervaluation was intentional and general, and that the language used in the return was his deliberate conclusion (R., 95). It will be noted, upon a reading of his testimony, that Mr. McLaughlin was also an unwilling witness, but we submit there is nothing in it which qualifies the statement made by him under oath in the answer to the order to show cause above referred to (R., 95 to 99).

---

T. J. G. Bolt, one of the field inspectors of the Board, said to be one of the best men in their employ (R., 86), who had been for years a supervisor (R., 187) stated that supervisors would tacitly admit their violation of the law (R., 191). He testified as follows:

"While the supervisor generally—as anybody knows—won't come out and say these things yet he will lead you to understand and tacitly acknowledge that he has done that, but to come right out and to say it in plain English, that he practices that which is contrary to law, and that he knows it, he won't do it, but he will give you to understand that



this is so and allow you to understand it so." (R., 191.)

And he admitted that in his county and over the State generally, as far as his knoweldge extended, it had been the habit to assess at a percentage of the true cash value (R., 193).

---

The conclusion of the Board, as stated in paragraph 11 of the return to the order to show cause (Exhibit E attached to the bill of complaint, R., 29) that the under-valuation throughout the State was intentional and general was not a mere guess, but was arrived at as a deliberate and official judgment of a lawfully constituted authority, after a very thorough and detailed examination of the assessments and the property covering the entire State.

Prior to the meeting of the State Board of Equalization in August, 1901, the Board of State Tax Commissioners employed a large number of men to go into the counties of the State and estimate the percentage of assessed valuation of real estate to the true value thereof by reference to the considerations named in deeds of conveyance of property in each locality as taken from the records in the office of the Register of Deeds, eliminating all conveyances which were manifestly not indicative of the true value of the property, and further verifying, as far as possible, by conversation with some person who had knowledge of the transaction the accuracy of the consideration named.

Exhibit F attached to the bill of complaint contains a table showing the result of this elaborate investigation. It shows the percentages of assessed valuation to the true value of the property in each assessment district in the State in the year 1901, in which year the total assessed valuation of all the other property in the State was 1328 million (R., 295 and following). The assessed value of the same property in 1902 was 1418 million.

It appears from this table that the percentages varied widely from as low as 22.8 per cent in the township of Germfask in Schoolcraft County to 108.7; but there were only nine assessment districts in the whole State where the percentages reached 100 per cent. There were 467 districts below 70 per cent and 390 between 70 per



cent and 80 per cent, and it is submitted that where the undervaluation is shown to be so universal and so extensive, the court will be warranted in assuming that as a matter of law it was intentional.

When the Board determined that the undervaluation was intentional and general, it was in possession of the information contained in Exhibit F, supplemented by the work of field inspectors, which continued from the time of the meeting of the Board of Equalization in 1901 to the time when the conclusion above referred to was reached in the month of April, 1903.

This determination was clearly within the broad authority given the Tax Commission by Act 154 of the Laws of 1899. They had power to make the determination, and there was no specific direction in the statute as to the method in which they should gather the information upon which the determination rested. The fact that they acted upon the reports of field inspectors employed by them does not make the determination any less conclusive between the parties to this issue.

*Chandler vs. Calumet & Hecla Mining Co.*, 149 U. S., 79.

*People vs. Barker*, 144 N. Y., 103.

F. O. Gullifer, Secretary of the State Board of Assessors, qualified by an experience of seven years in the office of the Board of Assessors in the City of Detroit, who traveled nearly all the time for the first two years that he was connected with the State Tax Commission, looking up individual assessments of large properties, both real and personal, and making an examination of properties for the purpose of reporting to the Board of State Tax Commissioners, having conferred with supervisors and assessing officers in the State to a large extent, both personally and by correspondence, who had a comprehensive and complete knowledge of the habits and practices of assessing officers of the State since the year 1900, stated that the general properties of the State were very generally under-assessed and the personal property to a greater extent than the real estate, and that the fact is so notorious in Michigan that it is a matter of common knowledge (R., 118).

Counsel argue that it must be presumed that local assessors have done their duty, but there is no evidence in the record that any local assessor in the State certified to any assessment roll, that he had complied with the law in its preparation, and not one was called as a witness to testify that he had made any attempt to do his duty.

---

We submit that the record shows that notwithstanding the work of the tax commission under the Act of 1899, the valuations have not been brought up to the cash basis, and that in cases where the undervaluation continued to exist, it was as intentional as it had been previous to the work of that commission.

---

In conclusion, upon this branch of the argument, we submit that the evidence shows that the other property of the State was assessed at not more than 82 per cent of its true cash value in the year 1902. We base the claim upon:

1. The finding of the Board of State Tax Commissioners and State Board of Assessors that the true cash value of the property was 1715 million dollars. This was an official determination under the authority of Act 154 of the laws of 1899.
2. The sworn testimony of four out of five of the individual members of the Board, the same being all the members of the Board who took part in the assessment in question (R., 440), each one saying that this estimate of 1715 million dollars was his opinion, deliberately formed and based upon an investigation which the statute authorized and directed them to make, leaving to their judgment the manner of taking the same.
3. It is corroborated by the finding of the Board of State Tax Commissioners and State Board of Assessors in 1901, fixing the amount at 1702 million dollars.
4. It is corroborated by the finding of the State Board of Equalization, acting under the advice of the Attorney General of the State, that they must equalize upon the basis of true cash value, that the total value of the property was 1578 million dollars in 1901, when it was assessed at only 1328 million dollars. (R., 334.)

3. Upon the testimony of the Secretary of the Board and the Chief Clerk and the field inspectors all of whom gave corroborating evidence.

Judge Taft, speaking for the United States Circuit Court of Appeals, in *Taylor vs. L. & N. R. R. Co.* (88 Fed., 350), said that "the various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment." In this case, we have such a judgment and in the record thereof we find stated as plainly as language permits every element necessary to the establishment of our claim. In the record of this judgment, we find that the general property of the State, by reference to which the average rate imposed upon our property was computed, was assessed on the local rolls for the year in question at 1418 million dollars. In another part of the record of this judgment, we find that this assessment upon the local rolls was a deliberate and intentional and general undervaluation. In another part of the record, we find that the true value of that property was 1715 million dollars, of which the assessed value was 82.7 per cent and in another part of the record, as we shall see hereafter, we find that the property of the appellants is assessed at its true cash value. Upon such a record, we are entitled to the relief we seek.

---

## II.

### THE FULL VALUATION OF APPELLANT'S PROPERTY.

**The Record Shows that Appellant's Property was Assessed at Its True Cash Value.**

We submit this proposition under five subdivisions:

1. It is admitted in the answer. (R., 35.)
2. The certificate attached to the roll so declares.
3. In the absence of fraud, this is conclusive.
4. There is no allegation of fraud in any case except

that of the Michigan Central, and in that case there is no evidence of fraud.

5. There is no evidence of any undervaluation.

---

FIRST: The answer admits that "as stated in said bill, the assessment made against the property of said complainant by said Freeman, Dust, Sayre and McLaughlin in said original assessment roll and transferred to said duplicate assessment roll prepared by them, was determined and found by them to be the true cash value of the property of said complainant and the full and actual value thereof" (R., 35). After a portion of the testimony had been taken, the defendant added an amendment to the answer which is inconsistent with the language just quoted (R., 57). We will speak of that, however, in another place. We submit the admission is not affected.

---

SECOND: The certificate attached to the roll declares that the figures therein represent what the Board believed to be the true cash value of the property described.

The certificate attached to the roll appears on page 28 of the record, as follows:

"We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal and other purposes, levied throughout the State, during the present year, as determined by us."

---

THIRD: In the absence of fraud this certificate is conclusive.

When the determination of a question of fact such as the valuation of the property of complainants is submit-

ted by the Legislature to a State board, its determination creates something more than a mere presumption of fact, and the determination can not be overthrown by showing that the fact is otherwise.

*Pittsburg R. R. Co. vs. Backus*, 154 U. S., 434.

In making their assessments, assessors exercise a quasi judicial power. In the absence of fraud, their conclusions are not open to collateral attack.

*Palmer vs. McMahon*, 133 U. S., 669.

---

FOURTH: There is no allegation of fraud in any case except that of the Michigan Central, and in that case there is no evidence of fraud.

All the answers contain the following language: "That he admits" that, as stated in said bill, the assessment made against the property of said complainant by said Freeman, Dust, Sayre and McLaughlin in said original assessment roll and transferred to said duplicate assessment roll prepared by them *was determined and found by them to be the true cash value of the property of said complainant and the full and actual value thereof*; but denies that said assessment of said property of said complainant was at the true and actual cash value thereof, or that the assessments of the property of said complainant and such others appearing on said assessment roll represented the actual and true cash value thereof as required by the constitution and statute."

The answers also contained this:

"The assessments of property throughout the State subject to advalorem assessment for State, county, township, school and municipal purposes, are uniformly nearer to cash value and to the constitutional and statutory requirements in this regard than is the property of the railroad and other corporations as assessed by the State Board of Assessors under the provisions of said Act 173, and that the assessments by the State Board of Assessors of the property of railroad and other corporations subject to its jurisdiction are not at, and do not represent, the true cash value of the property of those companies, but the property of such companies has been assessed and appears on said original and duplicate assess-

ment rolls at much below its true and actual cash value." (R., 35, 39.)

The Answer thus made is an express admission that the assessment made by the State Board of Assessors *was determined and found by the assessors to be the true cash value of the property of the complainant, and the full and actual value thereof*, accompanied by a denial by the defendant that the value as found and determined by the assessors was in fact the true and actual value of the property.

Here is no charge of any fraud on the part of or in the action of the assessors in making the assessment.

It is a statement that the assessors made the assessment according to the true cash value of the property as they found and determined its true cash value to be, with the further statement that in fact the assessment is below the true cash value of the property.

Under these Answers evidence to show that the value of the property is other than the value as assessed is not entitled to consideration. It is excluded from consideration by the authorities cited.

In the case of the Michigan Central, an amendment was made to the Answer by inserting at the end of and following said paragraph 2-b (R., 57), as follows:

"And particularly that the said assessment by the State Board of Assessors of the property of the said complainant, Michigan Central Railroad Co., as appearing on the said assessment rolls, is not, and does not, represent the true cash value of the property of said company used in operating and carrying on its railroad business within this State subject to assessment and taxation by the State Board of Assessors as required by statute, but that the property of the said complainant has been assessed and appears on said original and duplicate assessment rolls at an amount much below its true and actual cash value; that the said assessment on tax rolls, and the said assessment of property of the said complainant appearing, do not express or represent the true and honest judgment of its several members; that he believes, and charges the truth to be, that the said under-assessment of the property of the said complainant by the said State Board of Assessors, is not the result of inadvertence, mistake or accident, but

that such under-assessment and under-valuation was intentionally and wilfully made."

The language above referred to, that, "as stated in said bill, the assessment was made against the property of said complainant by said Freeman, Dust, Sayre, and McLaughlin, in said original assessment roll and transferred to said duplicate assessment roll prepared by them was determined and found by them to be the true cash value of the property of said complainant and the full and actual value thereof," still remains.

It is submitted that under the Answer as it stands, with this express admission, the testimony given in the case of the Michigan Central to show that the value of the property is greater than the assessed value is not competent and should not be considered, notwithstanding the subsequent charge made by the amendment upon the *defendant's belief* that an under-assessment and under-valuation was intentionally and wilfully made.

The assessment by the State Board of Assessors is to be impeached only upon a distinct case averred by the defendant of a fraudulent assessment made by the Board. When the case stated contains the explicit admission that the assessors made the assessment at the true cash value of the property, *as they found the true cash value thereof to be*, the admission is made upon the record of the case that there was no fraud in the assessment.

---

If the evidence shall be considered by the Court, then, before rejecting the assessment made by the State Board of Assessors, it must appear to the court from the evidence that the action of the State Board of Assessors in making the assessment as it stands upon the assessment roll was fraudulent in the sense that the members of the Board wilfully and intentionally, in violation of their oaths of office, made the assessment at a sum which was *less than they believed the true cash value of the property to be*.

It is submitted that the evidence does not authorize such conclusion.

The most that can be claimed for the averment of the answer as amended is:

1. That the property of complainant was assessed by the State Board of Assessors at much below its actual cash value.

2. That such under-valuation was not the result of inadvertence, mistake or accident, but was intentionally and wilfully made.

It will be argued, we infer, that this allegation is sustained by the testimony of the witnesses McLaughlin, Dust and Walker.

McLaughlin and Dust were members of the State Board of Assessors, and participated in the assessment in question, and we anticipate that it will be contended that their testimony shows that they intentionally and wilfully assented to a valuation of the property of complainant at less than they believed to be its true cash value.

The witness Walker was employed by the Board of Assessors in the capacity of expert engineer.

Upon grounds of public policy, the testimony of witnesses McLaughlin and Dust is incompetent to impeach their own conduct as members of the State Board of Assessors for the purpose of invalidating the action of said Board in which they participated, on the same principle which precludes members of a jury from giving evidence of their own misconduct to impeach their verdict; as, for instance, that they did not, 'at the time they assented to the verdict, or at any time, believe it to be right, but were over-persuaded by their associates to give a formal assent in order to avoid a disagreement.

Assuming that the testimony of the witnesses McLaughlin and Dust is competent, it does not sustain the allegation that complainants' property was intentionally and wilfully undervalued or that it was, in fact, undervalued.

The testimony of the witness McLaughlin, condensed by omitting questions, but in other respects substantially literal, is as follows:

*On direct examination—*

"In many cases the final values were not according to the opinion of the members at first. I hardly know what you mean by 'of compromise.' If you mean to give and take, why, I do not recall anything of that kind being done. Certain members of the



Board were very insistent upon the valuations of some of the property, and other members of the Board finally yielded and agreed to those valuations, or approached them, and the roll was signed. On the Michigan Central the valuations finally reached were not the valuations of a portion of the Board to start with, or, in fact, until the very last hours of our meeting. The valuations thought to be right by a portion of the Board were very much higher in both cases than the valuation finally agreed upon.

"My first value, or the value that I wished placed upon the Michigan Central railroad property, was \$55,000,000. I yielded to \$50,000,000 just before signing the roll in the first place. I mean before the review began. And finally, in the last moment, I yielded to a cut made of \$45,000,000. This was after the review, actually at the very last moment. (R., 431).

Q. Did you have a talk with Mr. Sayre in which he stated to you, in substance, that if you kept down the assessed values of the roads there would be no litigation arising in consequence of your assessment, and that he could find out for you what the railroads would be willing to stand?

A. There was a conversation between Mr. Sayre and me to that effect.

Q. I wish you would state what the conversation was?

A. Well, Mr. Sayre had insisted that the valuations we were likely to place upon the roads were higher than the roads would stand for, and that the result would be litigation and possibly a loss of the entire tax, and at one time he stated to me he could find out what assessments the railroads would be satisfied with, and on what assessment they would pay the tax without litigation; and he asked me if I wanted him to find out, and I told him no, he need not find out for me; I didn't want to know. (R., 433).

"The \$46,000,000 on the Michigan Central did not represent my judgment. My judgment was that it should be higher. When the final roll was signed with the valuation of the Michigan Central at \$45,000,000, that was still more remote from my best judgment. If I had had my own way in these matters, some of the figures would have been different, but I yielded to the arguments, etc., of other members of the Board, and finally consented to those figures."

Q. Did they or did they not at the time you signed the roll represent your honest judgment of the true cash value of the various properties?

A. They represented what I was willing the roll should stand at. As I have said, if I had had my own way, it would not have been quite that. (R., 434).

Q. You have spoken of two railroads as to which the figures on the roll did not represent your judgment of the true cash value, the Pere Marquette and the Michigan Central, as I understood you. Were there other roads in the same situation? Were there other instances on the roll where the valuation finally fixed did not meet your honest judgment of the true cash value?

A. There were others where I did not agree in the first instance with the figures finally reached. (R., 437).

Q. Were there any, where you did not agree in the last instance?

A. There were none that I did not consent to and finally approve?

Q. Answer my question. You are a lawyer and you know what my question is, and I wish you would answer it. Were there any, where you did not agree in the last instance?

A. No, I agreed to all of them. (R., 437).

The witness Dust testified as follows:

"Prior to the beginning of the review the Michigan Central was 51 or \$52,000,000, and the Pere Marquette 36. These figures were changed the last evening before the review was had through arguments by some of the members and a desire on the part of myself to compromise with the other members of the Board to agree on a value." (R., 439.)

"I consented to the figures as finally fixed, feeling myself as not entirely and solely able to value this vast property, and having full confidence in the other members of the Board and in their judgment and their honesty, that possibly I might be mistaken and that the values as placed and argued for by some of the other members were likely as near true as mine were." (R., 439).

Q. State whether or not the arguments which were made in 1902 with reference to the change of value which, as you recollect, approximately you had

fixed at 52 and 36 respectively for the Michigan Central and Pere Marquette, the arguments on behalf of the supporters of the change were calm and dispassionate or to the contrary?

A. Sometimes they were calm and again they were not.

Q. Were there any threats or was any intemperate language used by other members of the Board for the purpose of bringing about a reduction?

A. Not towards me; no, sir.

Q. Towards others in your hearing?

A. Yes, sir.

Q. State what they were, please?

A. Why, I remember of one remark made by a member to Mr. Jenks, in which the gentleman—the member—said, “By God, I won’t vote with the minority of this Board all the time. I want you to understand there will come a time when I will be voting with the majority.”

Q. Who was the member that made that statement?

A. Mr. Sayre.

Q. Mr. Jenks at that time was a member of your Board?

A. Yes, sir.

Q. And Mr. Jenks’ term was about to expire, was it?

A. Yes, sir.

Q. Was Mr. Jenks present when the review was closed and the final assessment made?

A. He was not; he was not a member. (R., 440).

“If it had been left to myself, I believe I would have placed it at a higher figure than that (referring to the Michigan Central). Mr. Freeman’s argument won me over from my former one. I stuck out finally and thought I would never go below 48 after we had talked and up to the last night, but Mr. Freeman was very insistent and very earnest about the reduction on the Michigan Central, and having full confidence in Mr. Freeman and in his integrity and judgment and intelligence, as I have said before, I did not know but what he knew more about the properties than I did.”

Q. Now, did that final figure represent your own individual judgment after reconsideration?

A. I can only answer that question that if it had been left to myself it would not have been fixed at that figure. (R., 441).

Q. Then the final result, at least as to the Michigan Central and Pere Marquette, did not represent the result of your individual consideration?

A. It did not.

Q. What was the fact as to other roads than those two? Were the final figures those which your own individual judgment would have fixed in every instance?

A. I would not care to state positively at this time as to just where my own figures were upon all the other roads. There were a great many of them. Some I undoubtedly had higher than others. Some I probably had a little lower than some of the others did.

Q. Then your own best recollection at this time would be that there were several other instances in the finally completed roll where your judgment, your individual judgment, did not concur with the conclusions adopted by the Board?

A. That is right, sir. (R., 442).

Q. At the time the roll that is in litigation was finally approved and became perfect, January 15th, under the old law, at that time how many tax commissioners or assessors were in office and acting?

A. Four.

Q. There was yourself and Mr. McLaughlin—

A. Yes, and Mr. Freeman and Mr. Sayre.

Q. On or about the 14th of January, 1903, you four gentlemen did join in signing the statutory certificate or warrant to the corrected and finally approved roll, did you not?

A. Yes, sir.

Q. And it was duly delivered by you as a basis of collection to the Auditor-General?

A. Yes, sir. (R., 443).

It cannot be reasonably contended that the testimony of these witnesses shows or tends to show that the two members other than these witnesses acted in bad faith; that is to say, contrary to their honest conviction, in assenting to the valuations which were finally agreed upon by the Board.

If, then, such property was intentionally and wilfully assessed at less than its true cash value, the only members of the Board guilty in the premises are these two witnesses. The question presented, then, is, whether the

testimony of these two witnesses is sufficient to establish the fact that they intentionally and wilfully assented to and joined in making the assessment at less than they honestly believed to be the true cash value of the property.

We submit that their testimony wholly fails in that regard.

McLaughlin's testimony, it will be noticed, is somewhat fuller and perhaps stronger (although that is hardly the proper word, we think) than that of Dust. But it, we submit, cannot be so construed as to convict him of admitting that he intentionally and wilfully signed the assessment roll, then honestly believing the valuation agreed upon as to complainant's property to be at less than its true cash value.

The testimony shows that, as might have been expected, all the members of the Board were not at first agreed as to the valuation which should be put upon the property of several of the companies, especially the Michigan Central and the Pere Marquette. It would have been very strange if it had been otherwise. There were discussions between the members disagreeing, and sometimes such discussions were undoubtedly somewhat heated; but the testimony fails to show any particulars in that regard except that the witness Dust, in answer to the question whether any threats or intemperate language were used by members of the Board of Assessors for the purpose of bringing about a reduction, alluded to a remark made by Mr. Sayre, addressed to Mr. Jenks, to the effect that he, Sayre, would not always be voting with the minority. Mr. Jenks ceased to be a member of the Board before the final completion of the assessment, and just how this can be construed into a threat for the purpose of bringing about a reduction it is somewhat difficult to see.

Both McLaughlin and Dust plainly stated that they gave their formal consent to the final roll and signed the certificate attached thereto, in which it was stated that the roll was made up in accordance with the provision of Act 173 of the Laws of 1902. This certificate was signed on the 12th day of December, 1902. (R. 347; R., 28.)

On the 14th day of April, 1903, both these witnesses signed and swore to the return to the Supreme Court in the mandamus case in which, in paragraph 8, appearing on page 44 of Exhibit "E" attached to the bill of com-

plaint, they reasserted that the contents of the certificate attached to the original roll, stating that they had set down in the assessment roll all the properties of the various companies, and had estimated the same at what they believed to be the true cash value thereof; and on the 9th day of May, 1903, after the Supreme Court had determined that the average rate must be computed by a different method, they signed another certificate of their redetermination of the average rate and made no change whatever in the valuations appearing on the roll. (R., 482).

It is stated in Section 8 of Exhibit "E," attached to the bill of complaint, on page 43, that after careful examination and consideration of reports and other information bearing upon the true cash value of said property of the railroad companies, the Board "assessed the same at its true and actual cash value in every instance; that it believes the said assessments of the said property of said corporations subject to taxation under the provisions of said Act 173 represent the true and actual value of such property so assessed as nearly as it is possible to estimate and obtain the same."

It would seem that nothing more need be said in this connection. If the situation were changed, and the complainants were seeking to invalidate this assessment upon the ground that the valuation was largely in excess of the actual value of the property, and it was intentionally and wilfully made by the Board and the testimony of like character and effect to that of these two witnesses, members of the Board, were reversed, so as to bear upon the question of over-valuation, and introduced, would the Court give it the slightest consideration as tending to show that such two members intentionally and wilfully joined in such over-valuation? It seems to us that there can be but one answer to this question, and that a negative one.<sup>1</sup>

(1) But what if the Court should find that two out of four of the acting members of the Board signed a roll which did not represent their judgment of the true cash value of the properties assessed thereon, what would then become of the roll in this case? Would it not be void, and would not the Court be bound to enjoin the collection of the tax which it purports to impose? The complainants were entitled to the honest judgment of the true cash value of the properties by a majority of the members of this State Board of Assessors, and any roll which does not record such honest judgment is no roll at all. We submit that this Court cannot substitute for the purposes of this case the judgment of Prof. Adams or any other witness as to what the true value is in order to hold the roll valid simply because the witnesses say the valuation fixed by the Board was less than the true value.

The witness James Walker testified that in his opinion certain members of the Board appeared to be anxious to crowd down the valuation of certain railroad properties; that Mr. Sayre wanted a low valuation on the Pere Marquette and Mr. Freeman wished a low valuation on the Michigan Central, (R., 638); that they evinced more anxiety about reaching low values for the Pere Marquette and Michigan Central than any other of the railroad systems. (R., 638).

Q. Can you state any facts or can you state anything which would indicate or tend to indicate that those gentlemen were interested in placing low valuations upon the properties of the two systems mentioned?

A. Not otherwise than the stand which they took at the very start of the valuation of those two properties. Their valuations seemed to be fixed in advance.

Q. What figures did Mr. Sayre stand at on the Pere Marquette first?

A. I do not recall the exact figures, but it was below 25 million dollars.

Q. What figures did Mr. Freeman have in mind for the Michigan Central?

A. About 42 millions, as I remember it. (R., 638).

Q. And during the entire assessments, was there an effort on the part of Mr. Sayre and Mr. Freeman to secure assessments of these properties at or near the figures which you have mentioned?

A. There were.

Q. Did Mr. Freeman state in your hearing that these great railroad corporations had a good deal of power and influence in politics, and it was proper for a man who wanted to stay in public life to favor them?

A. He made a remark in my presence in the office of the Tax Commissioner in Lansing, and in the presence of a half a dozen others, to the effect that the power of these great corporations could not be neglected.

Q. Do you remember the appearance in the Detroit Free Press or some other Detroit paper of an interview or a purported interview which indicated that Mr. Sayre was interested in placing a low value on certain railroads, and that there was a constant



effort on his part in Board meetings to keep down the value?

A. I remember that there was an article that appeared in the Detroit Free Press in which Mr. Sayre was pictured as the low valuer on the Board. (R., 639).

Q. Were you subsequently charged with having given that interview?

A. I was.

Q. By whom?

A. By Mr. Sayre and Mr. Freeman.

Q. And what was said to you at that time?

A. They told me that if I wrote that article they would take my head off, and I told them they were welcome to go ahead and try. If I told all that I knew a great many people would not be resting as well as they were. They shook hands with me and left the room and said they would let the matter drop. (R., 639).

There are twenty-seven appellants. There is no claim that the testimony shows any fraud on the part of the Board as to the valuation of the property of any of the complainants except the Michigan Central, and we submit that the testimony as to this company, which we have just examined, fails to support the charge of fraud. It is therefore submitted that the certificate is conclusive evidence that the Board intended to assess the property at its true cash value.

Moreover, the motive which is known to actuate many a local assessor in the preparation of his assessment roll, to wit: that the assessing officers in the neighboring districts are not assessing at the full cash value, was entirely absent in the case of the assessments of the railroad property for the reason that at the time the Board fixed the valuations, on or about the 14th day of January, 1903, (R., 443), they had taken care of the under-valuation on local assessment rolls in the computation of the average rate, by swelling the divisor to represent their judgment of the true cash value of such property. The method of computation of the average rate was not attacked or questioned until the 18th day of February, 1903, when the Board of Education of the City of Detroit made a demand upon the Board of Assessors for a change in the method of computation (R., 27).



We shall see, hereafter, that in obedience to the command of the legislature contained in Act 154 of the Laws of 1899, the Board of State Tax Commissioners had caused a valuation to be made of all the railroad property in the State, as of the month of November, 1900. The work was done by Professors Cooley and Adams of the University of Michigan, to whom we will refer again, and the result of their appraisal was 202 million dollars in round numbers. The Board of Assessors had these figures before them when they made the roll in question. The total valuation reached by the Board prior to the review was 208 million, which was modified on the review to 198 million (R., 636). These facts certainly tend very strongly to negative any charge of fraud.

---

**FIFTH.** There is no evidence of any undervaluation of the railroad property.

Independently of the charge of fraud on the part of the members of the State Board of Assessors in fixing the valuation of railroad property upon the assessment roll in question, it is claimed on the part of the defendant that it is a complete answer to our case if they show that the railroad property was in fact undervalued on the roll to the same extent as other property, and in support of that claim they have taken testimony, subject to our objection that it was incompetent and immaterial, which they claim tends to show that the railroad property, or some of it at least, was in fact worth more than it was assessed at.

In their effort to prove the value of railroad property, they offered as witnesses Professor M. E. Cooley, a Mechanical Engineer of the University of Michigan, who furnished what was called the "physical appraisal" or the cost of reproduction of the physical elements; and Professor Henry C. Adams, a teacher of political economy in the University of Michigan, who furnished testimony as to the value of the non-physical elements of the railroad property. Each Professor had a number of assistants who were also sworn.

As far as the physical appraisal was concerned, it appears in the record that Professor Cooley was employed by the State Board of Tax Commissioners, acting under the authority conferred by Act 154 of the Laws of

1899, above referred to, to make a physical appraisal of all the railroad property in the State as of the month of November, 1900. This appraisal was made in order to enable the Board of Tax Commissioners to report to the Legislature, as commanded by said act, what rate of taxation the railroad companies were paying upon the true cash value of their property.

In 1903, after this litigation arose, the State authorities employed Prof. Cooley to supplement his appraisal of 1900 by an examination which would enable him to determine what change had taken place in the property during the interval between the month of November, 1900, and the month of April, 1902.

The record contains the following statement (R., 489):

"The defendant introduced the testimony of Prof. Mortimer E. Cooley, dean of the department of engineering of the University of Michigan, and of a large number of civil and mechanical engineers (all of which was uncontradicted), that they had together, under the direction and supervision of said Cooley, made an appraisal of the physical properties of the various railroads concerned in the litigation herein for the year 1900 as of November of that year, and that in the year 1903, after this suit was begun, they made another appraisal of said physical properties as of April 15, 1902, and that the cost of reproducing such physical properties at said respective dates, after making proper deductions therefrom on account of depreciation from use and wear, is as shown by the following table,—no cash, accounts, materials or supplies being included in the 1900 appraisal:

Name of Road.	1900. Physical.	1902. Physical.
Ann Arbor System.....	\$ 6,059,945	\$ 6,978,346
Chi., Mil. & St. Paul.....	2,651,153	3,687,816
Chicago & Northwestern.....	13,106,148	14,625,191
Copper Range .....	1,151,701	2,713,943
Detroit & Mackinac.....	3,455,914	3,976,427
Duluth, S. S. & Atl.....	8,770,724	9,087,095
Escanaba & L. Superior.....	664,159	869,818
Gogebic & Montreal R.....	378,732	384,650
G. R. & I. System.....	9,603,447	10,833,307
Grand Trunk Western.....	5,555,887	6,864,084
Chi., Det. & C. G. T. Junc.....	2,579,836	2,850,556

Cinn., Sag. & Mack.....	1,089,748	1,182,227
742 D., G. H. & M.....	6,195,171	7,058,425
Mich. Air Line.....	1,188,089	1,730,829
St. Clair Tunnel.....	1,574,625	1,620,340
Tol., Sag. & Muskegon.....	1,083,104	1,312,959
L. Sup. & Ishpeming.....	1,864,940	1,962,101
Lake Shore System.....	9,876,234	18,803,011
Manistee and Northeastern...	1,183,623	1,383,907
Marquette & Southeastern....		433,377
Mich. Central System.....	35,463,517	43,151,815
Mineral Range System.....	1,953,764	2,880,253
Minneapolis, St. Paul & Sault		
Ste. Marie .....	4,016,206	4,557,262
Munising .....	732,566	642,246
Pontiac, Oxford & Nor.....	929,320	1,064,836
Sault Ste. M. Bridge Co.....	263,660	313,903
Wisconsin & Michigan.....	358,244	302,975

It will be noted that it is nowhere claimed that the figures given by Prof. Cooley represent values. A railroad may be worth more or less than it would cost to reproduce it at any given time. Prof. Adams is the man who testifies as to the value. The result of the physical appraisal of the cost of reproduction as given by Prof. Cooley is simply one of the steps in Prof. Adams' formula for determining the value of the property of a railroad company.

Prof. Adams made a valuation as of November, 1900, and he also was requested by the State authorities, after this litigation arose, to supplement his work by such an examination as would enable him to tell what increase, if any, had taken place between the month of November, 1900, and the month of April, 1902.

What we say is that an examination of the plan of valuation used by Prof. Adams will discredit it, and after such an examination, we shall submit to the Court that his testimony does not prove that the valuation as fixed by the State Board of Assessors upon the assessment roll in question was less than the true cash value of the property described.

Mr. Adams appraised the property of the appellants in 1900, and the Board had his figures before it in the preparation of the roll in question. The following table shows the figures of Prof. Adams for November, 1900, and the figures adopted by the Board of Assessors on the roll (R., 544):

	Valued by Cooley and Adams in 1900.	Assessed by Board in 1902.
Ann Arbor .....	\$ 6,392,388	\$ 7,582,000
Chicago, Milwaukee & St. P...	2,651,153	3,400,000
Chicago & Northwestern.....	15,250,362	14,750,000
Copper Range .....	1,151,701	2,100,000
Detroit & Mackinac.....	3,851,858	4,100,000
Duluth, South Shore & Atl...	12,449,538	12,500,000
Escanaba & Lake Superior....	664,159	1,125,000
Gogebic & Montreal River....	378,732	380,000
Grand Rapids & Ind. System..	10,544,790	11,500,000
Grand Trunk Western.....	8,447,130	11,000,000
Chgo., Det. & Canada G. T. Jct.	2,579,836	2,200,000
Cincinnati, Sag-w & Mackinaw	1,089,748	750,000
Detroit, Gd. Haven & Milw...	6,195,171	6,195,000
Michigan Air Line Railway...	1,188,089	600,000
St. Clair Tunnel.....	1,574,625	1,800,000
Toledo, Saginaw & Muskegon..	1,083,104	650,000
Lake Superior & Ishpeming...	1,864,940	1,400,000
Lake Sh. & Mich. Sou. System.	14,492,977	18,000,000
Manistee & Northeastern.....	1,650,213	1,500,000
Marquette & Southeastern....	not valued	440,000
Michigan Central System.....	\$49,633,417	\$45,000,000
Mineral Range System.....	2,817,650	2,000,000
Soo Line .....	4,016,206	5,100,000
Munising .....	732,566	410,000
Pontiac, Oxford & Northern..	929,320	1,000,000
Soo Bridge .....	530,285	400,000
Wisconsin & Michigan.....	358,244	225,000
<b>Total .....</b>	<b>\$152,518,202</b>	<b>\$156,107,000</b>

Deducting the amount of Marquette & Southeastern, which was not figured in 1900...	440,000
	<hr/> \$155,667,000

From this table it appears that Professor Adams found the value of the property of appellants to be \$152,518,202. In this appraisal, he omitted the Marquette & Southeastern. The Board assessed the property of the same companies in 1902 at \$155,667,000.

The following is a table showing the valuation fixed by the State Board in 1902, the valuation fixed by Professor Adams in 1900, and the valuation fixed by Professor Adams in 1902: (R., 544).

	Assessed Valuation in 1902.	Valued by Cooley & Adams in 1900.	Valued by Cooley & Adams in 1902.
Ann Arbor .....	\$ 7,582,000	\$ 6,392,388	\$ 7,640,282
C., M. & St. P...	3,400,000	2,651,153	3,400,000
Chicago & N. W.	14,750,000	15,250,362	14,750,000
Copper Range ..	2,100,000	1,151,701	2,100,000
Det. & Mackinac	4,100,000	3,851,858	4,848,247
D., S. S. & A...	12,500,000	12,449,538	13,606,288
Esc. & L. Supr...	1,125,000	664,159	1,125,000
Gog. & M. River	380,000	378,732	380,000
G. R. & I. System	11,500,000	10,544,790	12,670,715
G. T. Western...	11,000,000	8,447,130	10,312,035
C. D. & C. G. T. J.	2,200,000	2,579,836	2,200,000
Cin., Sag. & Ma'k	750,000	1,089,748	750,000
Det., G. H. & M.	6,195,000	6,195,171	6,195,000
Mich., Air L. Ry	600,000	1,188,089	600,000
St. Clair Tunnel	1,800,000	1,574,625	1,800,000
Toledo, S. & M...	650,000	1,083,104	650,000
Lake Sup. & Ishp	1,400,000	1,864,940	1,400,000
L. S. & M. S. Sysm	18,000,000	14,492,977	14,492,977 <sup>1</sup>
Manistee & N. E.	1,500,000	1,650,213	1,714,900
Mar. & S. E...	440,000	440,000 <sup>2</sup>	440,000
M. C. System...	45,000,000	49,633,417	63,900,211
Min. R. System.	2,000,000	2,817,650	2,000,000
Soo Line .....	5,100,000	4,016,206	7,960,286
Munising Ry. ...	410,000	732,566	410,000
Pontiac, O. & N.	1,000,000	929,320	1,488,046
Soo Bridge .....	400,000	530,285	530,285
Wisconsin & M...	225,000	358,244	325,000
<b>Totals .....</b>	<b>\$156,107,000</b>	<b>\$152,958,202</b>	<b>\$177,689,292</b>

(1) No valuation fixed in 1902, so we have used the figures of 1900 without any increase.

(2) No valuation fixed in 1900, so we have used the figures of 1902.

Following is a list of the roads as to which it is not claimed by the defendant that there was any under-valuation by the State Board, with a statement of the valuation fixed on the assessment roll, and the valuation sworn to by Professor Adams as of April, 1902. (R., 544).

	Assessed in 1902.	Valued by Adams in 1902.
Chicago, Milwaukee & St. P..	\$ 3,400,000	\$ 3,400,000
Chicago & Northwestern.....	14,750,000	14,750,000
Copper Range .....	2,100,000	2,100,000
Escanaba & Lake Superior...	1,125,000	1,125,000
Gogebic & Montreal River....	380,000	380,000
Grand Trunk Western.....	11,000,000	10,312,055
C., Det. & Canada G. T. Jct..	2,200,000	2,200,000
Cincinnati, Sag. & Mackinaw.	750,000	750,000
Detroit, Gd. H. & Milwaukee.	6,195,000	6,195,000
Mich. Air Line Ry.....	600,000	600,000
St. Clair Tunnel.....	1,800,000	1,800,000
Toledo, Saginaw & Muskegon.	650,000	650,000
Lake Superior & Ishpeming..	1,400,000	1,400,000
Lake Shore & M. S. System...	18,000,000	uncontradicted
Marquette & Southeastern....	440,000	440,000
Mineral Range .....	2,000,000	2,000,000
Munising .....	410,000	410,000
Total .....	\$67,200,000	

These companies are therefore entitled to a decree on this branch of the case and may be dropped from further consideration.

The following is a list of the roads as to which it is claimed that there was some undervaluation by the Board, with the assessed value and the valuation as sworn to by Professor Adams for April, 1902, although, as we have seen above, there was no pretense that there was any intentional undervaluation except as to the Michigan Central. Indeed, there is no allegation in the answer to the bill of any other company that there was any intentional undervaluation. (R., 544).

	Assessed in 1902.	Valued by Adams in 1902.
Ann Arbor .....	\$ 7,582,000	\$ 7,640,282
Detroit & Mackinac .....	4,100,000	4,848,247
Duluth, S. Shore & Atlantic..	12,500,000	13,606,288
Gd. Rapids & Indiana System	11,500,000	12,670,715
Manistee & Northeastern.....	1,500,000	1,714,900
Michigan Central System....	45,000,000	63,900,211
Soo Line .....	5,100,000	7,960,286
Pontiac, Oxford & Northern..	1,000,000	1,488,046
Soo Bridge .....	400,000	530,285
Wisconsin & Michigan.....	225,000	325,000
<b>Total<sup>1</sup> .....</b>	<b>\$88,907,000</b>	<b>\$114,684,260</b>

As to these roads we give below in one column the valuation as fixed by Professor Adams in 1900, and in a parallel column the valuation fixed by him for 1902. (R., 544).

	Valued by Adams in 1900.	Valued by Adams in 1902.
Ann Arbor .....	\$ 6,392,388	\$ 7,640,282
Detroit & Mackinac .....	3,851,858	4,848,247
Duluth, S. S. & Atlantic.....	12,449,538	13,606,288
Grand Rapids & Ind. System.	10,544,790	12,670,715
Manistee & Northeastern.....	1,650,213	1,714,900
Michigan Central .....	\$49,633,417	\$63,900,211
Soo Line .....	4,016,206	7,960,286
Pontiac, Oxford & Northern..	929,320	1,488,046
Soo Bridge .....	530,285	530,285
Wisconsin & Michigan.....	358,244	325,000
<b>Total .....</b>	<b>\$90,356,259</b>	<b>\$114,684,260</b>

We submit that an examination of the process by which these results were arrived at will show that they are not worthy to be considered as proof upon which the Court will be justified in finding that the valuations fixed by the State Board were anything other than the true cash value of the respective properties.

(1) As to the Lake Shore System, Prof. Adams gives no valuation for 1902, because he claims that he did not believe that the data were reliable. (Record, 547.) And it will be noted that in 1900 he fixed the value of the Lake Shore System in Michigan at \$14,492,977, which was \$3,500,000 less than the valuation by the State Board on the roll in question.



This subject falls naturally into two sub-divisions:

1. The appraisal of 1900.
  2. The appraisal of 1902.
- 

### *The Appraisal of 1900.*

It is claimed on the part of the defendant that the property of a railroad company may consist of two elements of value, one, physical, and the other non-physical, and that this non-physical element may be detected by an analysis of the net earnings of the company. If the net earnings are in excess of the amount required to pay "a fair return" upon the cost of reproduction of the physical property—not its original cost, but what it would cost to reproduce it at the time of the investigation—such excess discloses the existence of a non-physical element, the extent of which may be determined by capitalization. Professor Adams is the witness upon whom they rely for the non-physical valuation, and this is his formula:

"In 1900 I was called upon by the Michigan State Tax Commission to determine whether railroads were paying a tax rate on their value equal to the rate on other property. With that problem in view, I formulated this inventory plan as follows:

"First. I began with the gross earnings from operation; from this I deducted the aggregate operating expenses; to the remainder (termed 'income from operation') I added the income of corporate investments, the sum being termed 'total income.'

"Second. I deducted from the total income as an annuity chargeable to capital, a certain per cent on the appraised value of the physical property. This accepts a certain amount as necessary to support it which is regarded as capital.

"Third. From this amount I deducted rents paid for leases of property operated,—if such property is not covered by the physical examination and made the basis of the above annuity. The remainder, if any, represents the surplus, which, capitalized at a certain rate, gives the value of the non-physical property." (R., 500).

In other words, to practically apply this system to the Michigan Central Railroad property, for example, as he applied it in 1900: He found the average net earnings



for a period of ten years from the reports of the company to the State officers. From this amount he deducted an annuity of 5 per cent. on the sum which Prof. Cooley said it would cost to reproduce the road in its then condition, and capitalized the balance at 7 per cent. To this last result he added the physical appraisal, and the total was his estimate of the value of the road. (R., 525). We have no means of knowing from this record that the Board did not use the Adams' method of computation with slightly different rates for the annuity and capitalization.

It is obvious that very much depends upon the rates used for the annuity and capitalization; and these rates are determined by reference to the Professor's opinion of the rate which investors in securities of a railroad of the class under consideration would be willing to receive as a net return upon their investment. (R., 501).

In the case of the Michigan Central he allowed an annuity of 4% on the engineer's estimate of the present cost of reproduction of the physical property, which was equal to saying that the company was entitled to earn not more than 4% on its investment in physical property; and he capitalized the remainder at 6%, which is the same as saying that the company was entitled to earn a net return of not more than 6% on its non-physical property. He added to the 4% in the case of the physical property and to the 6% in the case of the non-physical property, 1%, which he understood to be the average rate of taxation paid upon other property in the State at that time, having excluded taxes from operating expenses in ascertaining the net earnings. (R., 525).

### OBJECTIONS TO THE PLAN.

This scheme for the valuation of the taxable property of a railroad company is an invention of Prof. Adams. It was promulgated in October, 1900. (R., 514.) And before proceeding to show the details of its marvelous growth in eighteen months, we desire to call attention to some of the objections to it, as a method of arriving at the valuation of the property of complainants for the purposes of this case.

1. It violates the statute in that it directly values the franchises.

2. It violates the statute in that it takes into consideration other elements of non-physical value than franchises.

3. It violates the statute and the Constitution in that it takes into consideration elements of value which are not taken into consideration in the valuation of other classes of property for the purpose of taxation.

4. It violates the statute in that it imposes a tax which is not entirely *ad valorem*, but in part at least an income tax.

5. It is not in accord with practical business experience, in that it assumes that the net yield to investors, in stocks and bonds at the current market prices in Wall Street, affords a criterion of the proper rate to be used in capitalizing net earnings, to ascertain the value of property from which they are derived.

---

*First. The Adams Plan of Valuation Violates the Statute in that it Directly Values the Franchises.*

The statute provides, in Section 4, that it shall be the duty of said Board to make an annual assessment upon a roll to be prepared by said Board, of the property having a situs in this State, as hereinafter defined, etc., and it provides in Section 5 that "the term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch boards and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, *said franchises not to be directly assessed but to be taken into consideration in determining the value of the other property.*"

The professor's scheme rests upon the assumption that the property of a corporation has two distinct elements of value, to-wit: (1) the cost of reproduction of the physical property as affected by its present state of depreciation (2) a non-physical or intangible element which is capable of a separate appraisal.

The first element, the cost of reproduction as affected

by present depreciation, was ascertained in this case by Professor Cooley, as we have already seen.

The second element, Professor Adams finds to exist in any case where a corporation has a permanent income which exceeds the amount necessary to pay a "fair return" on the physical valuation. (R., 516, 518.)

This element of non-physical value, insofar as it applies to a railroad company, is subdivided by the professor into its elements as follows:

1. Franchise value, including
  - (a) The right to be a corporation;
  - (b) The right to use public property and to employ public authority for corporate ends.
2. Possession of traffic not exposed to competition.
3. Possession of traffic held by established connections.
4. Benefit of economies made possible by increased density of traffic.
5. Growth of the community, including organization and vitality of the business itself and of institutions served by it. (R., 497.)

It is true that he states that these elements attach to the physical property, and that he would not suggest that they exist separately from the physical property; but at the same time he puts a value upon them, separate and apart from the physical property, and it is submitted that, to all intents and purposes, they are treated in the professor's scheme as existing separate and apart from the physical property; and he states that, so far as the figures are concerned, the result of the application of his scheme to the valuation of the non-physical elements of the property of a railroad company will be exactly the same if we strike out every element of non-physical value except one, and that remaining one may be the franchise, which is necessarily always present. It is therefore submitted that this scheme does result in a separate valuation of the franchise, which is forbidden by the statute above quoted (R., 501). In fact he told the Industrial Commission that his plan was a rule for valuing what is commonly called the franchise. (Vol. IX., Rep. Industrial Commission.)

*Second. The Adams Plan of Valuation Violates the Statute in that it Takes Into Consideration Other Elements of Value Than the Franchise.*

It appears to be plain, after a reading of the statute, that it does not authorize the consideration of elements other than the physical property as affected by the franchise; but it appears from the testimony of Professor Adams that he has taken into consideration a number of other elements in arriving at a valuation of the property. If such a plan had been adopted by the State Board it would have been in violation of the law.

Benefits derived from traffic not exposed to competition, traffic held by established connections, economies made possible by increased density of traffic, and general prosperity are not franchises. These benefits arise from the sagacity of the management. Indeed, Mr. Thomas L. Green, an expert called by the defendant, frankly stated that the Adams plan of valuation would tax the brains of the manager and the muscle of the engineer. (R., 564.)

---

*Third. The Adams Plan of Valuation Violates the Statute and the Constitution in that it Takes Into Consideration Elements Which Are Not Taken Into Consideration in the Valuation of Other Classes of Property for the Purposes of Taxation.*

The Court will take judicial notice of the fact that in the assessment of other property for the purpose of taxation, the assessing officer does not take into consideration these so-called elements of non-physical value. (R., 519.)

These elements of non-physical value, as described by Professor Adams, rest upon income—surplus income over and above what he thinks is a fair return upon the physical property involved in the enterprise. The non-physical value appears with such surplus earnings, it increases with such surplus earnings, and it disappears with such surplus earnings. (R., 559, 560.)

That this element is not taken into consideration by local assessors in the valuation of property assessed by them, is known of all men, and needs no proof (R., 519). Such assessors never seek to discover the profits made in a business carried on by the use of property they are

called upon to assess. They value any particular parcel of land at the same rate per unit of measure as they value adjoining land, although the former may be in use in carrying on a very prosperous business and the latter vacant, and the buildings and machinery upon the premises used in carrying on such business the assessors assess at their value as buildings and machinery, without regard to the profits made in the business.

Take the case of two city lots lying side by side, owned by different parties, having upon them a single building, one half upon each lot, one part occupied and in use in the carrying on of a prosperous business, say a dry goods establishment, and the other half vacant. The assessors, we submit, would value such two properties at exactly the same amount. Of this there can be no doubt.

And yet it appears from the testimony of the Professor that this element of value exists in the case of other property and might be made the subject of valuation for the purposes of taxation if it could only be discovered. He says his theory of valuation is applicable wherever there is a good-will or value due to organization (R., 513); but that it would not be practicable to apply it in the case of ordinary business because there is no method by which the net earnings can be ascertained as in the case of a railroad company. There is no uniform method of accounting and no report to State officers of the balance sheets. (R., 514.)

It is certain, as we will have occasion to point out more definitely later, that the Constitution and the statute contemplate equality of valuation of property for the purposes of taxation and the term "cash value" as used in the act in question can have no other or different meaning from the same term used in the general tax law. It would not, therefore, be allowable to take into consideration in assessing property under this law, elements of value which are not taken into consideration, even though they exist, in the case of property assessed under the general tax law.

The Constitution and the statute not merely contemplate, but demand, absolute equality of taxation as between the property of corporations taxable under the amendment to the Constitution, and the other property of the State; and equality of taxation requires as well equality of valuation of the property taxed as equality of rate (Constitution of Michigan, Art. XIV., § 12; *Saltonstall vs. Board of Review*, 132 Mich., 196); and equality

of valuation demands that the same elements of value shall be taken into consideration.

---

*Fourth. The Adams Plan of Valuation Violates the Statute in that it Imposes a Tax Which is Not Entirely ad valorem, but in Part, at Least, an Income Tax.*

As we have seen above, this element of non-physical value appears and disappears with surplus income over and above what the Professor finds is a fair return upon the physical property invested in the enterprise. And we submit that to the extent that Professor Adams' scheme of valuation for the purpose of taxation takes into consideration this element of non-physical value based upon surplus income, it is an income tax, which is not authorized by the statute under consideration.

It is admitted by the testimony of Thomas L. Green, who was called by the defendant as an expert to support the Adams plan of valuation that the rule, as it was applied to the Michigan Central property in 1902, would impose a tax at the average rate on the cost of reproduction of the physical property, and in addition thereto, a tax of 33 cents on every dollar of the average net income in excess of a return of  $3\frac{1}{2}$  per cent on the cost of reproduction (R., 562).

Professor Adams says it is not an income tax, but a means of administering an *ad valorem* tax (R., 516).

He differentiates that portion of the tax which rests upon the non-physical valuation from an income tax by saying that the computation is based upon an *average* net income *for a period of years*, and that it therefore does not depend absolutely upon the income for any one year (R., 516).

We submit that this reasoning may well be characterized as absurd. Income is income, whether it be the current income for a stated period, or the average income for a stated period; and a tax levied on account of the one or the other is a tax levied on account of income, and not a tax levied upon the value of property. The fact that the tax is assessed upon income capitalized instead of upon the income directly, makes no difference. The amount of the tax is determined solely by the amount of the income.

---

*Fifth. The Adams Plan of Valuation is not in Accord with Practical Business Experience, in that it Assumes that the Net Yield to Investors in Stocks and Bonds, at the Current Market Prices in Wall Street, Affords a Criterion of the Proper Rate to be Used in Capitalizing Net Earnings to Ascertain the Value of the Property from Which they Are Derived.*

Even if we assume that this scheme of valuation is sound, and authorized by the statute, and if it be conceded for the purpose of the argument in this case that a capitalization of the net earnings of a corporation will afford some proper basis for an estimate of the true cash value of the property from which those earnings were derived, which, let it be understood, we do not concede except for the purposes of the argument, then we submit that the method by which the Professor arrives at the rate to be used in capitalization is not in accord with practical business experience.

In the first place, it should be noticed that Professor Adams claims in his testimony to have approached the problem of the proper rate to be used in capitalization as a business man would approach a proposition for the purchase or sale of a great property (R., 510).

We submit, however, in spite of his manifest determination to omit nothing from his biography having a tendency to qualify him to give testimony as an expert in this case, that there is nothing in the experience of Professor Adams, which qualifies him to approach the problem of the valuation of a railroad as a business man would approach a proposition to purchase or sell a great property. He never bought or sold a railroad. As far as the record shows, he never bought or sold any large property or had anything to do with such a transaction. He has had no experience whatever in business of any kind. His whole career has been academic, and his views and theories have never been tested by any practical experience of his own.

But, in his attempt to approach the problem as a business man would approach a proposition for the purchase or sale of a great property, he has concluded that the net yield to investors in stocks and bonds on the Wall Street market is a fair basis for the estimate of the rate that investors in railroad property are willing to receive as a net return upon their investment. In other words, the net yield to investors in bonds of the Michigan Central Railroad Company, secured by a mortgage on its physical



property, at the average market prices of those bonds for a year, in the Wall Street market, is the rate which would be a fair return to the owner of a railroad upon his investment; and that the net yield to investors in Michigan Central Railroad stock, at the average market prices in Wall Street for a year, would be the rate which would be a fair return to the owner of the Michigan Central Railroad upon the proper valuation of the franchise of the company, and the good will of its business resulting from 50 years of successful operation (R., 501, 517, 518).

We respectfully submit that such a theory is absolutely ridiculous when tested in the light of the experience of men engaged in large transactions and having large sums of money to invest in a business enterprise.

---

Charles F. Cox, the treasurer of the Michigan Central Railroad Company, and an officer in about 40 other railroad companies, said that the market prices of the Michigan Central stock in the year adopted by Professor Adams were no fair criterion of the intrinsic value of the stock (R., 656). If the market prices afforded no fair criterion of the market value of the stock, much less would they afford a fair basis for a computation of the value of the property of the company.

---

George H. Russel, the president, and for 15 years actively engaged in the management of the largest bank in the State of Michigan, said that the net yield to investors in securities of the Michigan Central at the average market prices in Wall Street for a year has nothing to do with the question of the proper rate to be used in capitalizing the net earnings of the company to determine the value of its property for the purpose of taxation (R., 690).

---

Ellwood T. Hance, financier, and the managing officer of the Union Trust Company of the City of Detroit, Michigan, testified to the same effect (R., 693).

---

Truman H. Newberry, a capitalist, connected with a large number of manufacturing corporations and with financial institutions in the City of Detroit, and having



had experience in the purchase and sale of large properties as a business man, testified to the same effect (R., 695).

---

H. D. Walbridge, a capitalist of the City of New York, having had experience in the purchase and reorganization of large properties, street railways, electric properties and gas properties in the State of Michigan and elsewhere, testified to the same effect (R., 698).

---

Thomas F. Woodlock, the editor of the Wall Street Journal, a student of markets and an adviser of investors, testified that the market prices of Michigan Central stock in the year ending August 15, 1902, which was the year adopted by Professor Adams, were no criterion whatever of the value of any considerable portion of the Michigan Central stock, and that people who expect to be taxed on their incomes in New York City and could not escape by the ordinary methods, would not hold bonds which did not yield more than  $3\frac{1}{2}$  per cent on the investment (R., 659).

It follows from this that the rate which Professor Adams found to be the net yield to investors in securities of the class of the Michigan Central bonds at the average market prices for the year adopted, was no fair criterion of what an investor in a railroad property would be willing to receive as a net return upon his investment.

---

James Marwick, an expert accountant of the City of New York, with a wide experience in the study of railroad accounts, for the purpose of determining a capitalizable value of the property, testified to the same effect (R., 649).

---

Professor Emory R. Johnson, having charge of the Department of Transportation and Commerce in the University of Pennsylvania, an economist, prepared, as the record shows, to testify upon this subject, by an academic experience as wide and as varied as that of Professor Adams, stated that the market quotations for the year ending August 15, 1902, did not afford a criterion by which to measure the value of all the stock of the Michigan Central Railroad; and it must follow that if it is not

a criterion by which to measure the value of all the stock, it must be much less a criterion by which to measure the value of the property of the company (R., 669).

### THE APPRAISAL OF 1902.

The result of Professor Adams' work in the defense of this litigation was to very greatly increase his estimate of the value of appellant's property, as will appear by the following table:

Following is a list of the complainants, with a statement of the total valuation as found by Prof. Adams in November, 1900, and the total valuation as found by him in April, 1902 (R., 544).

	Adams' Valuation, 1900.	Adams' Valuation, 1902.
Ann Arbor .....	\$ 6,392,388	\$ 7,640,282
Chicago, Milwaukee & St. Paul	2,651,153	3,400,000
Chicago & Northwestern .....	15,250,362	14,750,000
Copper Range .....	1,151,701	2,100,000
Detroit & Mackinac .....	3,851,858	4,848,247
Duluth, S. Shore & Atlantic...	12,449,538	13,606,288
Escanaba & Lake Superior....	664,159	1,125,000
Gobebic & Montreal River....	378,732	380,000
Grand Rapids & Indiana.....	10,544,790	12,670,715
Grand Trunk Western.....	8,447,130	10,312,055
C., Det. & Can. G. T. Jet....	2,579,836	2,200,000
Cincinnati, Saginaw & Mack..	1,089,748	750,000
Detroit, Gd. Haven & Milw...	6,195,171	6,195,000
Mich. Air Line Railway.....	1,188,089	600,000
St. Clair Tunnel .....	1,574,625	1,800,000
Toledo, Saginaw & Mackinaw.	1,083,104	650,000
Lake Superior & Ishpeming...	1,864,940	1,400,000
L. S. & M. S. System.....	14,492,977	14,492,977
Manistee & Northeastern.....	1,650,213	1,714,900
Marquette & Southeastern....	440,000	440,000
Michigan Central System.....	49,633,417	63,900,211
Mineral Range System.....	2,817,650	2,000,000
Soo Line .....	4,016,206	7,960,286
Munising .....	732,566	410,000
Pontiac, Oxford & Northern...	929,320	1,488,046
Soo Bridge .....	530,285	530,285
Wisconsin & Michigan .....	358,244	325,000
Totals.....	\$152,958,202	\$177,689,292

This enormous increase is due to the changes in the method of computation; the formula used in these cases differed from that used in 1900 in the following particulars:

1. In 1900, he used the average gross earnings for a period of ten years. In 1902 he used the average gross earnings for a period of five years. The record shows that during the ten year period, there had been a steady increase in the gross earnings, and it is obvious that the adoption of the average for five years would tend to result in a higher valuation than would the average for ten years.

2. In 1900, he dealt with net earnings before the payment of taxes and allowed for the taxes by adding to the rates of annuity and capitalization a rate which he assumed represented the average rate of taxation paid upon other property in the State. In 1902, he took the net earnings after the taxes were paid, and therefore did not allow for the increased tax which the enforcement of his rule would impose.

3. In 1902, he used lower rates of capitalization. In the case of the Michigan Central, he allowed an annuity of only  $3\frac{1}{2}$  per cent on the physical property in place of  $4\frac{1}{2}$  per cent in 1900, and he capitalized the net corporate surplus at 5 per cent in 1902 instead of 6 per cent used in 1902 (R., 525).

We submit below in one column the plan of 1902 as applied in the testimony in this case to the property of the Michigan Central R. R. Co., and in a parallel column, for the purpose of comparison, a computation showing what the result would have been in this case if he had used the plan of 1900.

Plan of 1902 as applied in this case:	What the result would have been if the plan of 1900 had been used:
1. Average gross income for the system for 5 years, 1898 to 1902, inclusive'....\$17,818,984	1. Average gross income in Michigan for 10 years, 1893 to 1902, inclusive'.....\$ 8,864,479
2. Average operating expenses for same period'.... 14,198,607	2. Average operating expenses, including taxes for same period' ..... 6,909,730
3. Average taxes for same period not computed.....	3. Average taxes for same period' ..... 294,460
4. Average operating expenses, exclusive of taxes, not computed .....	4. Average operating expenses, exclusive of taxes for same period' ..... 6,615,271
5. Item 2 from Item 1 leaves average net earnings for the system for the same period after taxes were paid, amounting to \$3,620,377, the Michigan	5. Item 4 from Item 1 leaves average net earnings for the same period before payment of taxes'... 2,249,208

Mileage proportion of which is' .....	2,503,345	6. Average rate of taxation in 1902' .....	.0165
6. Average rate of taxation on other property, not computed .....		7. Annuity of 4% + 1.65% <sup>a</sup> on the physical appraisal, exclusive of cash and current assets, \$43,151,815 <sup>c</sup> .....	2,438,077
7. Annuity of 3½% on physical appraisal of 1902, of \$43,151,815 + cash and current assets, \$2,959,196 <sup>c</sup> .....		8. Item 7 from Item 5 leaves net corporate surplus plus for capitalization, which is a negative quantity .....	
\$46,111,011 <sup>c</sup> is .....	1,613,885	9. ....	
8. Item 7 from Item 5 leaves net corporate surplus for capitalization .....	889,460	10. Item 9 + physical appraisal, exclusive of cash and current assets. ....	43,151,815
9. Which is 5% of <sup>a</sup> .....	17,789,200		
10. Item 9 + physical appraisal, including cash and current assets, \$46,111,011 <sup>c</sup> .....	63,900,211		

### OBJECTIONS TO THE PLAN AS AMENDED.

We have pointed out some of the objections to the general plan invented by Professor Adams, and we have pointed out above, four particulars in which the scheme of 1902 differs from the scheme as it was described in 1900, and we submit that in every respect in which the scheme of 1902 differs from that of 1900, the scheme of 1902 is a still further departure from reason and from the law.

*First. In 1900 he took the average gross earnings for a period of ten years. In 1902 he took the average gross earnings for a period of five years.*

It will be seen by an examination of the table of earnings and expenses of the Michigan Central System (R., 631), which is illustrated graphically as to the Michigan Central main line by a plat appearing in the record (R., 630; Exhibit 3, March 25, 1904); that for the five-year period adopted by Professor Adams in his plan of 1902 the earnings were steadily and rapidly increasing; whereas for the ten years from 1893 to 1902 there was both prosperity and depression; and it appears from the testimony of the witnesses on the part of the complainant that the only rational plan to be made use of, if the value

(2) R., 511. (3) R., 631. (4) R., 511. (5) R., 525, 526. (6) R., 483. (7) R., 544. (9) R., 544.

of the property is to be judged by a capitalization of the net earnings, is that which will base the calculations upon a period long enough to include what some have designated as an economic cycle, or a period of depression and a period of inflation. A glance at the table or the plat will show that it was obvious to Prof. Adams, before he made a figure in his estimate of the value of the railroads for 1902, that the computation based upon the five years from 1898 to 1902 would produce a larger result than a computation based upon the period of ten years from 1893 to 1902.

George H. Russel, a witness for the complainant, referred to above, said the period averaged should be from ten to twenty years (R., 690).

Ellwood T. Hance, sworn for the complainants, referred to above, said the period averaged should be ten years (R., 693).

Truman H. Newberry, now Assistant Secretary of the Navy, sworn for complainant, referred to above, testified to the same effect (R., 695).

H. D. Walbridge testified to the same effect (R., 698).

And finally Professor Johnson called on the part of the complainants, gave it as his opinion as an economist, that the period averaged should be ten years instead of five (R., 670).

We are not unmindful of the fact that Judge Grosscup and Judge Cochran, in the two cases hereinafter cited, recognized the propriety in the cases before them of using a five-year period; but Judge Cochran expressly states that he is recommending five years as against one year, and that he does not intend to lay down any hard and fast rule, but seems to leave it to be determined by circumstances surrounding each particular case, and that in any case it is essential that it should cover a sufficient period to show a settled condition of things. (*Louisv. & Nashv. R. Co. vs. Coulter*, 131 Fed., 282, at p. 304.)

---

It also appears in this connection that while in 1900 Professor Adams took the net earnings from the company's own reports for the State of Michigan, in 1902 he

computed the net for the entire system and assigned to Michigan a mileage proportion.

It appears from the record that the Michigan Central has trackage rights over 14 miles of Illinois Central track from Kensington to Chicago, and that this 14 miles was not treated as a part of the total mileage in ascertaining the Michigan mileage proportion of the net earnings (R., 513). It is admitted by Professor Adams that this trackage right formed a very valuable part of the property of the company, and it is certain that a portion of the earnings are derived from the exercise of the right; and we submit that in any computation based upon Michigan mileage proportion that 14 miles should be treated as a part of the total mileage. This would have made a difference in our favor of some \$480,000 in the valuation according to the plan of 1902.

---

*Second. In 1900 he dealt with net earnings before payment of taxes, and allowed for the taxes by adding to the rates of annuity and capitalization a rate which he assumed represented the average rate of taxation paid upon other property in the State. In 1902 he dealt with net earnings after taxes were paid, and therefore did not allow for the increased taxes which the enforcement of his rule would impose.*

The absurdity of this method of computation is made manifest by a study of a hypothetical case which was submitted to Prof. Adams in the course of his cross-examination (R., 522), where it is made plainly to appear that if we assume that we have a new railroad substantially like the Michigan Central, and assume that the gross earnings and operating expenses, aside from taxes, remained the same for a period of five years, so that we can discover the effect of Prof. Adams' method of dealing with the taxes, the valuation of the property would vary from \$52,000,000 the first year to \$59,740,000 the fifth year, and no two years would the valuation be the same.

The first year the valuation would be.....	\$52,000,000
The second year .....	62,000,000
The third year .....	59,160,000
The fourth year .....	59,960,000
and the fifth year .....	59,740,000

Professor Adams admitted that this vacillation was due to his method of dealing with the taxes, and that if he used the plan as he outlined it in 1900 the valuation would continue the same, in the hypothetical case submitted, year after year.

---

On this branch of the case we are not without precedent. In the case of the Chicago Union Traction Co. vs. State Board of Equalization, 114 Fed., 561, which will be hereafter referred to, Judge Grosscup took occasion to consider the question of the method of ascertaining the value of the property of a street railroad company for the purposes of taxation by a capitalization of the net earnings, and he distinctly held that the computation should be so made as to allow for the additional taxes that the enforcement of this rule would produce. See page 567.

Prof. Johnson also testified as an economist that such an allowance should be made, and criticised the plan of Prof. Adams as used in this case in that respect (R., 670).

And the witness Walker, sworn for the defendant, added the tax rate to the rate of capitalization in his computation (R., 634).

---

*Third and Fourth. These two objections refer to the rates of annuity and capitalization, as to both of which Professor Adams adopted a lower rate in 1902 than he did in 1900.*

We have seen above that he gets at the rates by reference to the stock and bond market, and that according to the testimony of our witnesses the stock and bond market has nothing to do with the question. And we have called several witnesses who have had experience as business men in the estimate of the value of large properties, and asked them to assume that the value of the taxable property of a railroad company is to be arrived at by a capitalization of the net earnings of the company, and to state what, in their opinion, the proper rate to be used in capitalization would be.

Mr. Russel testified that it should be 6 per cent (R., 690).

Mr. Hance said it should be 8 per cent (R., 693).



Mr. Walbridge agreed with Mr. Hance (R., 698).

Mr. Newberry said it should be 10 per cent (R., 695).

A reading of the testimony of these witnesses will show their reasons for their conclusions, and we submit that they are rational, practical and conclusive.

---

As to the rate of capitalization also, it should be noted that Judge Grosscup, in the case above referred to, used 6 per cent, and Judge Cochran, in the United States Circuit Court for the District of Kentucky, in disposing of the case of Louisville & Nashville R. Co. vs. Coulter, 131 Fed., 282, used 6 per cent as the rate of capitalization. See page 303.

See also Spring Valley Water Works vs. City of San Francisco, 124 Fed., 574, at 598.

And even Professor Johnson, the economist, who approved the use of two rates of capitalization, one for the physical property and the other for the non-physical, said in the case of the Michigan Central the rates should be  $4\frac{1}{2}$  and 6, plus the tax rate in each case, instead of  $3\frac{1}{2}$  and 5, without adding any tax rate (R., 670).

---

#### PROFESSOR JOHNSON'S COMPUTATION.

Another very serious objection to the determination of the value of the taxable property of a railroad corporation by reference to the net earnings for a single year or for any period of years, is found in the fact that there is a great diversity in the methods of bookkeeping employed by different railroad companies.

The Interstate Commerce Commission, for the purpose of bringing about as far as possible a uniformity in the methods of bookkeeping by the railroads of the country, has prepared a schedule showing the details of the operating expense account of a railroad corporation, and prescribing what classes of expenditures should be charged to construction and paid for out of capital. The classification is designed to include in operating expenses not only the cost of current repairs, but the cost of new property to replace old property worn out or destroyed by accident (R., 507). In other words, a company is en-



titled to deduct from its gross earnings before reporting any net earnings a sum of money sufficient to operate the road and at the same time to maintain it against depreciation.

But competent railroad managers differ in their interpretation of the word "maintenance" (R., 507). Some say it means the keeping of the property up to the requirements of technical engineering development, which is something beyond the meaning given to the word by the classification of the Interstate Commerce Commission.

For example, if the development of the equipment used by a railroad company requires the substitution of a steel truss bridge for a wooden bridge, the Interstate Commerce Commission classification of operating expenses would require that the cost of the new steel truss bridge should be treated as an additional investment of capital. But experience has shown that the development of railroad equipment in weight and capacity has been so rapid that while the steel truss bridge has yet perhaps 75 per cent of its wearing value remaining, it becomes necessary to lay aside the steel truss bridge and substitute for it a steel girder deck bridge; and it has therefore been demonstrated that prudent accounting requires that there should be charged to operating expenses and taken out of current earnings before any net is reported, not only a sum of money sufficient to maintain the property against depreciation, but to keep it abreast of technical development.

This subject is elaborated somewhat in the testimony in this case by Mr. Cox (R., 654) and by Prof. Johnson (R., 607). And the rates of capitalization testified to by Messrs. Russel, Hance, Walbridge and Newberry, hereinbefore referred to, are based upon the hypothesis that there has been charged to the operating expenses of the railroad company in question a sum sufficient not only to maintain the property against depreciation, but to keep it abreast of technical development.

It is obvious, therefore, that until the method of book-keeping employed in a given case is known, it is not possible to arrive at a rational conclusion by any capitalization of net earnings; for if the company sees fit to charge to new construction and pay for out of capital many expenditures which should by the classification prescribed by the Interstate Commerce Commission, clearly be charged to operating expenses, and thus swell the net earnings on the books, it is plain that a dollar of net earnings as shown by the books is by no means the same guide to the value of the property involved as would be a dollar of the net earnings shown on the books of the

Michigan Central, where there had been charged to operating expenses not only all proper expenses for maintenance, but also many so-called permanent improvements.

---

It appeared in this case that the Michigan Central for many years has charged to operating expenses a large number of items which, in the opinion of Professor Johnson, who admits that it is proper to charge to operating expenses enough to keep the property abreast of technical development, were in fact permanent improvements, and ought to have been treated as a new investment of capital in determining the extent to which the net earnings shown by the books would be a guide to the value of the property. But, fortunately, the Michigan Central had preserved an itemized statement of all the so-called permanent improvements during the period of ten years involved, which had been paid for out of earnings, and charged to operating expenses (R., 680). This statement of betterments or permanent improvements, so-called, which had been paid out of earnings, was submitted to Professor Johnson so that he might add to the statement of the net earnings as shown by the books all sums of money which he thought ought not to have been paid out of the net earnings or might properly have been treated as an additional investment of capital. In other words, he was provided with the data by which he might normalize the net earnings of the Michigan Central Company, and requested to do so; and his computation of the true value of the property for the purposes of taxation is based upon the net earnings thus normalized (R., 670).

And whereas, Professor Adams fixes a valuation in 1902 of some \$64,000,000, Professor Johnson finds that the fair application of even such a plan of valuation for the purposes of taxation would produce only \$46,000,000, which is only \$1,000,000 more than it was assessed at by the State Board (R., 671). Prof. Adams practically admits the propriety of Prof. Johnson's rates of annuity and capitalization (R., 816).

While we do not concede for the purposes of this case that it is ever proper to ascertain the value of the taxable property of a railroad company by any such method as that used by Professor Adams, and while, in calling Professor Johnson, we expressly protested against such a method of valuation, yet we submit that the testimony of Professor Johnson shows that, after a reasonable appli-

cation of even such a method, the valuation fixed by the State Board appearing upon the assessment roll in this case as to the property of the Michigan Central cannot be criticised.

---

So much for the Adams plan of valuation, which we submit is absolutely unworthy the further serious consideration of this Court, as it has been attempted to apply it in this case. If the formula which he promulgated in 1900 was correct, what happened in 18 months to change it? What new principle of philosophy was evolved? What scientific discovery was made which rendered the taxable property of the Michigan Central Railroad Company more valuable to the extent of \$20,000,000 than it would have been if the computation had been made by the plan outlined in 1900?

If it was right in 1900 to ascertain the net earnings of a corporation by taking an average of its operations for ten years, so as to include a period of depression as well as a period of prosperity, it was wrong in 1902 to take an average of only five years, and that five years on the crest of the highest wave of prosperity that the business interests of the country have ever seen.

If it was right in 1900 to deal with net earnings before payment of taxes, and allow for the increase of taxes imposed by the enforcement of this rule of valuation by increasing the rates for the annuity and capitalization, it was wrong in 1902 to take the net earnings after the payment of taxes and make no allowance for the increase of taxes thus imposed.

If it was right in 1900 to allow an annuity of  $4\frac{1}{2}$  per cent and to capitalize the net corporate surplus at 6 per cent, it was wrong in 1902 to allow an annuity of only  $3\frac{1}{2}$  per cent and to capitalize the net corporate surplus at only 5 per cent.

And there is no pretense of an explanation in the record by any witness sworn on the part of the defendant, of these marvelous changes, every one of which operates to increase the result reached by the computation.

---

An attempt was made to corroborate the testimony of Professor Adams by a computation according to what was spoken of as the "stock and bond plan." The stock and

bonds of a corporation are not a measure of the value of taxable property.

*San Francisco National Bank vs. Dodge* (decided by this Court, February 27, 1905).

### III.

#### OUR RIGHT TO RELIEF BASED UPON THE CONSTITUTION OF THE STATE.

If the Court reaches the conclusion that the property of the appellants has been assessed at its true cash value, and that the other property, by reference to which the average rate is to be determined, has been intentionally and generally assessed at something less than its true cash value, it will be no answer to our claim for relief to say that the Constitution of Michigan and the statute in question, as construed by the tax officers of the State, have established two classes of property for the purposes of valuation, including in one class the property of the corporations affected by Act 173, and in the other class all other property upon which ad valorem taxes are assessed for the purposes mentioned in the Act, and that a different rule of valuation may be permitted in the different classes.

This will be no answer because the Constitution of Michigan does not permit classification of property for the purpose of valuation for taxation. As far as the valuation of property for the purposes of taxation is concerned, there is but one class. All assessments must be at cash value. Art. XIV., Sec. 12, provides that "all assessments hereafter authorized shall be on property at its cash value." (Appendix "B.") The Constitution provides for a uniform rule of taxation, and there has been no invasion of that rule by the amendment of 1900, except to authorize the average rate. With respect to the valuation, the uniform rule is preserved.

Under the requirement that all assessments shall be at cash value according to a uniform rule, the Supreme Court of Michigan has held that there can be but one rule of valuation.

*Saltonstall vs. Board of Review of Cheboygan*,  
132 Mich., 196.

The tax sought to be imposed by the Act in question is a property tax, and is governed by the constitutional provision quoted.

*Pingree vs. The Auditor General*, 120 Mich., 95.

---

#### IV.

### OUR RIGHT TO RELIEF BASED UPON EQUITABLE PRINCIPLES AND JUDICIAL CONSTRUCTION OF THE CONSTITUTION OF THE UNITED STATES.

It is well settled that if there has been, with respect to a class of property, systematic, intentional, and unlawful undervaluation, a taxpayer whose property is not thus undervalued is entitled to relief in equity.

*Taylor vs. Louisv. & Nashv.*, 88 Fed., 350.

*Louisv. Trust Co. vs. Stone*, 107 Fed., 305.

*Louisv. & Nashv. vs. Coulter*, 131 Fed., 282, 310.

*Cummins vs. Bank*, 101 U. S., 153.

*Stanley vs. Supervisors*, 121 U. S., 550.

In the *Taylor* case (p. 373) Judge Taft said:

"Equity will not relieve against an assessment merely because it happens to be at a higher rate than that of other property; that such inequalities, due to mistake, to the fallibility of human judgment, or to other accidental causes, must be borne, for the reason that absolute uniformity cannot be obtained; \* \* \* in other words, what may be called 'sporadic cases of discrimination' cannot be remedied by the chancellor. He can only interfere when it is made clear that there is, with respect to certain species of property, systematic, intentional, and unlawful undervaluations for taxation by the taxing officers, which necessarily effect an unjust discrimination against the species of property of which the complainant is an owner. The reason for this distinction is obvious. The occasional and accidental discriminations are inevitable to every assessment, and are not likely to continue, because not the result of an illegal purpose on the part of anyone. If equitable interference

in such cases could be invoked, the obstruction to the collection of taxes would be so frequent as to be intolerable. More than this, an action to enjoin a tax is a collateral attack upon the judgment of a quasi-judicial tribunal; and it cannot be justified except on the ground of an obvious violation of law, or something equivalent to fraud. It does not lie where the injury complained of arises only from the erroneous, but honest, judgment of the lawfully constituted tax tribunal. The interference by the chancellor in the case at bar and in the Cummings case, rests on something equivalent to fraud in the tribunal imposing the tax. The various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment. If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, makes the whole assessment, considered as one judgment, a fraud upon the fully assessed property. And this is true although the particular board assessing the complainant's property may have been wholly free from fault or intentional discrimination."

In the Stone case (p. 305) Judge Day said:

"It may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of complainant, and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by the taxing officers of the State, which necessarily affects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases federal jurisdiction will arise because of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Such was assumed to be the law in Coulter vs. Louisville & Nashville, decided by this Court during the October term of 1904.

Upon this record we submit all the appellants are entitled to have their taxes reduced to 82.7 per cent of the amount charged upon the roll in question.

Respectfully submitted,

O. E. BUTTERFIELD,

*Solicitor for Appellant the Michigan Central R. Co. and of Counsel for the Other Appellants.*

HENRY RUSSEL,  
ASHLEY POND,  
LLOYD W. BOWERS,  
BENTON HANCHETT,  
*Also of Counsel.*

## APPENDIX "A."

Act No. 173 (1901).

AN ACT to provide for the assessment of the property of railroad companies, union stations and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes.

*The People of the State of Michigan enact:*

Section 1. That the Board of State Tax Commissioners created under the laws of this State, shall ex-officio constitute a State Board of Assessors, one of whom shall be elected chairman of said board.

Sec. 2. The secretary of the Board of State Tax Commissioners shall be ex-officio secretary of the State Board of Assessors without extra compensation, and shall keep a record of all its proceedings in addition to such other duties as may be required of him by said board, and shall devote his whole time to the duties of his office. In addition to the secretary said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act: *Provided*, That the compensation paid for such clerical assistance shall not in any case exceed one thousand dollars for each person employed per annum: *Provided further*, That



said board may employ such other assistance as may be necessary, with the consent of the Governor and the Board of State Auditors. The compensation of the said secretary and clerks, and all other necessary expenses incurred in carrying out the provisions of this act shall be allowed by the Board of State Auditors upon proper vouchers approved by the chairman and secretary of the board, and paid by the State Treasurer out of the general fund.

Sec. 3. Said board shall have access to all books, papers, documents, statements and accounts, on file or of record in any of the Departments of State, subject to the rules and regulations of the respective departments relative to the care of public records. It shall have like access to all books, papers, documents, statements and accounts, on file or of record in counties, townships and municipalities. It shall have the right to subpoena witnesses, upon a subpoena signed by the chairman of said board and attested by the secretary thereof, delivered to such witnesses, which subpoenas may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment, to be issued by any Circuit Court in this State, upon proper showing that such witness has been properly subpoenaed, and has refused to obey such subpoena. The person appearing in response to such subpoena shall receive like compensation as is allowed by the statutes of this State to witnesses in the Circuit Court, to be allowed by the Board of State Auditors upon the presentation of a copy of such subpoena, with the number of days' service and mileage endorsed thereon and approved by a member of said Board of Assessors, or the secretary thereof. The person serving such subpoena shall receive the same compensation now allowed to sheriffs or other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of the board, or by the secretary thereof. It shall have the right to inspect and examine the books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board, and if such corporation, firm or individual refuse to permit said inspection and examination, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall, for each such refusal, neglect or failure, forfeit the sum of five hundred dollars to the State, the sum so forfeited to be recovered in a proper action



brought in the name of the people of the State of Michigan, in any court of competent jurisdiction.

Sec. 4. It shall be the duty of said board to make an annual assessment upon an assessment roll to be prepared by said board, of the property having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, express companies doing business within this State, car loaning companies, and refrigerator and fast freight line companies, and all other corporations owning, leasing, running or operating any freight, stock, refrigerator or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State.

Sec. 5. The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: *Provided, however,* That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities in which the same may be situate. The term company, corporation or association, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast freight line company, and any and all other corporations subject to taxation under this act. The term "property having a situs in this State" shall include all the property, real and personal, of the cor-

porations enumerated in this act, owned used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined.

Sec. 6. The several corporations enumerated in this act, doing business in this State, shall annually, between the first and thirtieth days of June, in each year, under the oath of the president, secretary, treasurer, superintendent or chief officer of such company, make and file with the State Board of Assessors in such form as said Board may provide, upon blanks to be furnished by said Board, a statement containing the following facts:

#### RAILROAD, UNION STATION AND DEPOT COMPANIES.

The blanks furnished to railroad and union station and depot companies shall provide for the following information:

First: The name of the company;

Second: The nature of the company, and under the laws of what State or country organized;

Third: The location of its principal office;

Fourth: The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth: The name and postoffice address of the chief officer or managing agent of the company in Michigan;

Sixth: The number of shares of capital stock;

Seventh: The par value and market value, or if there be no market value, the actual value, of the shares of stock on the second Monday of April of the year in which the report is made;

Eighth: A detailed statement of the real estate owned by the company in Michigan, and where situate, and the value thereof;

Ninth: A detailed statement of the personal property, including moneys and credit owned by the company in Michigan, on the second Monday in April in the year in which the report is made, where situate, and the value thereof;

Tenth: The total value of the real estate owned by the company situate outside of Michigan;

Eleven: The total value of the personal property of the company situate outside of Michigan;

Twelfth: The whole length of their lines, and the length of so much of their lines as is within or is without Michigan, which lines shall include what said railroad companies control and use as owners, lessees, or otherwise;

Thirteenth: A statement of the entire gross receipts of the companies from whatever source derived, for the year ending the second Monday of April in the year for which the report is made;

Fourteenth: Such other facts and information as said Board may require, in the form of the returns prescribed by it.

#### EXPRESS COMPANIES.

The blanks furnished to express companies shall provide for the following information:

First: The name of the company;

Second: The nature of the company, and under the laws of what state or country organized;

Third: The location of its principal office;

Fourth: The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth: The name and postoffice address of the chief officer or managing agent of the company in the State of Michigan;

Sixth: The number of shares of capital stock, (a) authorized, (b) issued;

Seventh: The par value and market value, or if there be no market value, the actual value of the shares of stock, together with the total amount of bonded indebtedness, on the second Monday of April of the year for which the report is made;

Eighth: The situation, income and value in detail of its real estate in this State;

Ninth: The total income from and cash value of all its real estate situated outside of this State;

Tenth: A full and correct inventory at the true cash value, of its personal property, including moneys and credits, within this State;

Eleventh: The true cash value of all its personal property, including money and credits, without this State;

Twelfth: The whole length and names of railroad lines and water and stage routes over which it did business,

and separately, in detail, the portions of such lines and routes within this State, and the portion of such routes over navigable waters of the United States within this State;

Thirteenth: Such other facts and information as may be deemed necessary by the State Board of Assessors, or any member thereof, to the proper assessment of the property of such company.

#### CAR LOANING, STOCK CAR, REFRIGERATOR AND FAST FREIGHT LINE COMPANIES, AND OTHER CAR COMPANIES.

The blanks furnished to car loaning, stock car, refrigerator and fast freight line companies shall provide for the following information:

First: The corporate name of the company;

Second: The nature of the business of said company, and under the laws of what state or country organized;

Third: The location of its principal office;

Fourth: The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth: The location of its principal office in the State of Michigan, together with the name and address of the chief officer or managing agent of the company in Michigan;

Sixth: The total number of cars and rolling stock of any such corporation run over or operated upon any line or lines of railroad within this State each day during the entire year preceding the date of making and filing such report;

Seventh: The cost of construction of each of said cars;

Eighth: The length of time the same has been in service;

Ninth: The cash value of each of said cars so operated and run in this State, at the time of making and filing such report;

Tenth: And such other and additional information as may be deemed necessary by said Board, or any member thereof, to the proper assessment of the cars of such company in accordance with the provisions of this act and to the performance of the duties imposed upon it hereby.

Sec. 7. Blanks for making these statements provided for in Section Six shall be furnished to such companies

on making application to said Board: *Provided, That* the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other State officers. In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the Board shall inform itself as best it may on the matters necessary to be known in order to discharge its duties with respect to the assessment of the property of such company. Any company which shall refuse or neglect to make the report required by this act within the time specified, shall be subject to a penalty of five hundred dollars for each day of the continuance of such neglect or refusal to file said report, to be recovered in a proper action brought in the name of the people of the State of Michigan in any court of competent jurisdiction.

Sec. 8. Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of December in each year, it shall be the duty of the said State Board of Assessors, to prepare an assessment roll as provided in Section Four of this act, upon which they shall assess at the true cash value on the second Monday of April of the year in which the assessment is made all the property of the companies herein enumerated subject to taxation under this act, which said assessments shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and the true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said Board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of such companies filed in the office of any officer of this State, and such other evidence as may be obtainable bearing thereon. In determining the true cash value of the property of railroad and union station and depot companies which own, lease or operate lines partly within and partly without this State, the said Board shall be guided, in ascertaining the property subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without this State. In determining the cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebted-

ness of such express company. From the amount so obtained, and determined, said Board shall deduct the actual value of all real estate owned by it as ascertained by said Board, and the actual value of all its personal property which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: the said Board shall then divide the amount as obtained above by the total number of miles of railroad, stage, water and other routes over which the company did business, to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this State, exclusive, however, of the number of miles of water routes over the navigable waters of the United States within this State, to which result shall be added the value of all real estate owned by such express company in this State as determined by said Board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company subject to assessment and taxation in this State. In ascertaining the cash value of the property of car loaning, stock car, refrigerator, fast freight line and other car companies subject to taxation under this act, they shall ascertain the average number of cars used in this State during the year preceding the date of the filing of the report mentioned in the preceding section, such average to be determined by dividing the total number of cars so used or operated within this State during said year by the total number of days on which said cars were so used or operated within this State; and they shall also ascertain the average cash value of such average number of cars, and from said data the total valuation shall be determined and shall be the assessment against the property of said corporation.

Sec. 9. Upon said assessment roll, after the names of each of the companies assessed thereon, shall be placed a general description of the properties of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. In the case of railroad, union station and depot companies, such general description may be as follows: "Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a state board of assessors." In the case of car loaning, stock car, refrigerator and fast freight line and other car companies, the fol-

lowing general description may be used: "Cars subject to taxation by a state board of assessors." In the case of express companies, the following general description may be used: "Property subject to taxation by a state board of assessors." In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of said companies so assessed.

Sec. 10. On the third Monday of December in each year, it shall be the duty of the State Board of Assessors to meet at the State Capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll, may subpoena witnesses as provided in Section Three of this act and have such hearing as may be deemed necessary. In case it shall appear or be made to appear to the members of said Board, acting in review for assessment purposes, that the property of any corporation subject to taxation under the provisions of this act shall have been omitted from said assessment roll, it shall place the same thereon and make the assessment thereof as required in Sections Eight and Nine of this act: *Provided*, That any such assessment shall take place in time to allow five full days for the review of the same before the expiration of the time herein provided for the completion of the review. After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided. After said board shall have completed the review of said roll, a majority thereof shall certify under their hands officially, and spread on said roll, a certificate to the effect that the same has been acted upon and reviewed in accordance with law, which certificate shall state all the alterations,



changes, corrections and additions made in or to the assessment or valuation of the property appearing on said roll.

Sec. 11. It shall be the duty of the county clerk in each county in this State, as soon as possible after the equalization of the board of supervisors of his county of the assessment rolls of the several municipalities therein, and not later than the first day of November in each year, to make a report, duly certified, to the State Board of Assessors, of the record of such equalization and of the record required to be made under section thirty-seven of the general tax law, being section three thousand eight hundred sixty of the compiled laws of eighteen hundred ninety-seven, as appears upon the records of such board of supervisors, which report shall, among other things, contain a statement of the amount of ad valorem taxes to be raised in the several municipalities of such county for State, county, municipal, township, school, and other purposes, and a statement of the aggregate valuation of the property in each of said several municipalities as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It shall be the duty of the supervisor or other assessing officer of cities and villages in this State governed by special charters, which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purposes of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make, within the time above limited, a properly certified report to the State Board of Assessors of all ad valorem taxes raised in any of said municipalities which have not been reported to the board of supervisors for the purposes of equalization and review. In case any county clerk or any supervisor or assessing officer shall neglect or fail to make the report by this section required, within the time limited, the said State Board of Assessors shall inspect and examine, or cause an inspection and examination of the records of said board of supervisors, or in cities affected by this section, an examination of the records of the proper officer, for the purpose of procuring the information required for the purpose of arriving at the average rate of taxation in this State; and the said board, in addition thereto, may require such reports on blanks which it shall prepare and furnish therefor, from all county, State and municipal officers, as it shall deem necessary to the accomplishment of the purpose of this act. Any county clerk, supervisor



or assessing officer who shall fail to make the report required by this section shall be subject to a penalty of one hundred dollars, to be recovered in a proper action in the name of the people of the State of Michigan, in any court of competent jurisdiction.

Sec. 12. As soon as the reports required by the preceding section to be filed have been filed, or the information therein required to be procured shall have been procured, and not later than the fifteenth day of December in each year, the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined.

Sec. 13. Said Board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties. After the completion of said tax roll, and prior to the first day of February in each year, the said board shall attach thereto a certificate signed by the members of the board, or a majority thereof, which shall be as follows: "We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal and other purposes, levied through the State during the present year, as determined by us. The said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer. The said taxes shall be payable on the first day of March following the assessment and levy thereof, and shall be in lieu of all taxes for State and local purposes, not including special assessments on property particularly benefited,

made in any county, city, village or township. All taxes not paid before the first day of April in the year in which the same are payable shall bear interest at the rate of one per cent per month thereafter. The taxes so extended against said companies shall become forthwith a debt due from each of said companies to the State, and shall constitute a lien upon all the property of said companies, real, personal and mixed, from the time of the extension until the payment thereof, which lien shall take precedence of all demands, judgments, assignments, by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided. The State Board of Assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the State Board, or a majority of them, commanding the Auditor General to collect the several sums mentioned in the last column of such roll, and being the sum for which the said company was assessed and was liable to pay for a tax upon its property under the provisions of this act for the purposes provided for in this act; and the said warrant shall authorize and command the Auditor General, in case any corporation named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of such sale as provided for in the general laws of this State for the sale of property seized for taxes and offered for sale: *Provided*, He may bring an action in the name of the people of the State of Michigan in any court of competent jurisdiction in the State of Michigan, or in any other State, for the enforcement of said lien, and upon recovery of judgment or decree therein the same may be collected by execution, levy and sale, as in other cases, upon judgments in courts of record.

Sec. 14. If any court of competent jurisdiction shall adjudge that any tax levied under the provisions of this act is illegal on account of any irregularity or informality in the determination of the average rate of taxation required to be ascertained and determined by said State Board of Assessors, or for the reason that such average rate has not been ascertained and determined according to law, it shall be the duty of the said State Board of Assessors, whether any part of the taxes assessed and

levied have been paid or not, to redetermine and reascertain the average rate of taxation throughout the State in accordance with law, and when such redetermination and reascertainment has been made, to make a duplicate of the original assessment roll and to extend the taxes thereon according to such redetermined and reascertained average rate, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as an original assessment made in accordance with law. All proceedings on the redetermination and reascertainment of such average rate and for the extension and collection of taxes upon said duplicate assessment roll shall be conducted in the method originally provided for, so far as may be. Whenever any sum or part thereof levied upon any property subject to taxation under this act so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment upon said property, and the reassessment to that extent shall be deemed to be satisfied.

Sec. 15. No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any court of this State on account of any irregularity in any assessment or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this State is in accordance with the constitution and statutes of this State.

Sec. 16. All taxes collected under this act shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State debt, in the order herein recited, until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund; and such taxes as are collected under the provisions of this act shall be treated and disbursed as specific taxes are now treated and disbursed: *Provided, however,* That if any of the corporations, com-

panies or associations herein named were not paying specific taxes to this State on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the State.

Sec. 17. The first assessment under this act shall be made as herein required in the year nineteen hundred and two. Nothing herein contained shall be deemed a waiver or affect the collection of the specific taxes required to be paid by the companies hereby affected, on the first day of July, in the year nineteen hundred and one, and on the first day of July in the year nineteen hundred and two, under the general laws, upon the property or business of such companies operated within this State. The existing laws providing for the collection of such specific taxes shall be continued in force until the collection and payment of all taxes levied thereunder for the year nineteen hundred and one and previous years.

Sec. 18. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each.

Sec. 19. If any person, company, association or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any member of said board, during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the State the sum of ten thousand dollars for each such offense, to be recovered in an action in the name of the people of the State of Michigan, in any court of competent jurisdiction. And the recovery of such fine under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

Sec. 20. All other acts or parts of acts, whether contained in any acts for the incorporation of railroad companies, union station and depot companies, express companies, cor loaning companies, stock car companies, refrigerator car companies, and fast freight line com-

panies, or in any other law of this State, so far as such acts or parts of acts are inconsistent with this act, and no further, are hereby repealed except as herein expressly stated: *Provided, however,* That all rights which the State has now under any of said acts, for taxes or penalties, shall not in any way be affected by this act, and shall not constitute a bar to any prosecution or recovery on account of such taxes or penalties.

Approved May 27, 1901.

## APPENDIX "B."

### CONSTITUTION OF MICHIGAN, ARTICLE XIV.

Section 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The Legislature may provide for the collection of specific taxes from corporations. The Legislature may provide for the assessment of the property of corporations, at its true cash value, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific State taxes in section one of this article.

Sec. 11. The Legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided,* That the Legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes.

Sec. 12. All assessments hereafter authorized shall be on property at its cash value.

Sec. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a State board, on all taxable property, except that taxed under laws passed pursuant to section ten of this article.

## APPENDIX "C."

Sec. 3857 of the Compiled Laws of 1897 reads as follows:

The board of supervisors in each county shall, at their session in October in each year, examine the assessment rolls of the several townships, wards, or cities, and ascertain whether the relative valuation of the real property in the respective townships, wards or cities, has been equally and uniformly estimated. If, on such examination, they shall deem such valuation to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward, or city, or townships, wards, or cities, such an amount as in their judgment will produce relatively an equal and uniform valuation of the real property in the county, and the amount added to or deducted from the valuation in any township, ward, or city shall be entered upon the records. They shall also cause to be entered upon their records the aggregate valuation of the taxable real and personal property of each township, ward or city in their county as determined by them. The board shall also make such alterations in the description of any lands upon such rolls as may be necessary to render such description conformable to the requirements of this act. After such rolls shall have been equalized, each shall be certified to by the chairman and clerk of the board and be delivered to the supervisor of the proper township, ward, or city, who shall file and keep the same in his office.

## APPENDIX "D."

## CHAPTER 15.—THE STATE BOARD OF EQUALIZATION.

## An Act to provide for a State BOARD OF EQUALIZATION.

(129) Section 1. *The People of the State of Michigan enact*, That there shall be a state board of equalization, to consist of the lieutenant governor, auditor general, secretary of state, state treasurer and commissioner of the land office, whose duty it shall be, in the year eighteen hundred and fifty-one, and every fifth year thereafter, to

equalize the assessments on all taxable property in the State except that paying specific taxes, as hereinafter provided.

(130) Sec. 2. It shall be the duty of the board to meet at the capitol in the village of Lansing, on the third Monday of August, and the persons composing it shall organize by choosing one of their number chairman, and the deputy auditor general, or one of the clerks in the office of the auditor general, shall act as secretary, who shall keep a record of the proceedings, which shall be certified by said chairman and secretary, and filed in the office of the auditor general.

(131) Sec. 3. The several persons constituting the board as herein provided, before entering upon the duties of their office, shall each take and subscribe the constitutional oath of office, before some person authorized to administer oaths; which oaths shall be filed and preserved with the proceedings of the board.

(132) Sec. 4. After said board shall have been organized, they shall proceed to examine the tabular statements of the board of supervisors of each county, provided for in the eighth section of this act, and to hear the representatives from the several boards of supervisors as hereinafter provided; and they shall determine whether the relative valuation between the several counties is equal and uniform, according to location soil, improvements, production and manufactories; and also whether the personal estate of the several counties has been uniformly estimated, according to the best information which can be derived from the statistics of the state, or from any other source. If, after such examination such assessment shall be determined relatively unequal, they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in such county or counties, such percentage as will produce relative equal and uniform valuations between the several counties in the state: and the percentage added to or deducted from the valuations in each county, shall be entered upon their records; and the valuations of the several counties, as equalized, shall be certified and signed by the chairman and secretary of the board, and filed in the office of the auditor general, and shall be the basis for apportioning all state taxes until another equalization shall be made.



(133) Sec. 5. It shall be the duty of the auditor general, as soon as may be, after the determination of the state board of equalization shall be filed in his office, as provided in the preceding section, to send a certified transcript of the same to the treasurer of each county, who shall cause the same to be published in one or more papers in the county.

(134) Sec. 6. A meeting of the board of supervisors for the year eighteen hundred and ninety-one, shall be held on the fourth Monday of June, and on the fourth Monday of June every fifth year thereafter; and when convened, the board shall proceed to equalize the assessment rolls in the same manner as is provided in chapter twenty of the revised statutes of eighteen hundred and forty-six; and each of said supervisors shall add up the columns of their respective rolls, enumerating the number of acres of land, and the value of the real estate and personal property so assessed, so as to show the aggregate of each.

(135) Sec. 7. The board of equalizers shall hear any evidence which may be laid before them by any person appointed by any board of supervisors, and any representation made by such person in behalf of any county.

(136) Sec. 8. It shall be the duty of the clerk of each board of supervisors to make out a tabular statement from the aggregate of the several assessment rolls of the number of acres of land, and the value of the real estate and personal property in each township and ward, as assessed, and also the aggregate valuation of the real estate of each roll, as equalized, and make a certified copy thereof, signed by the chairman and clerk, and transmit the same to the auditor general on or before the second Monday of July following, who shall lay the same before the state board of equalization when organized: Provided that such statement and copy shall not embrace any property paying specific taxes.

(137) Sec. 9. Any three members of the board shall constitute a quorum for the transaction of business. The lieutenant governor shall receive three dollars a day for actual attendance, and ten cents a mile for travel in going to and returning from the seat of government, the usual traveled route, to be paid out of the treasury on the warrant of the auditor general.



## APPENDIX "E."

Act 154 of the Public Acts of 1899 reads as follows:

AN ACT to amend sections twenty-one and twenty-two of act number two hundred six of the Public Acts of eighteen hundred ninety-three, entitled "An act to provide for the assessment of property, and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes, and for the inspection and disposition of lands bid off to the State and not redeemed or purchased, and to repeal Act number two-hundred of the Public Acts of eighteen hundred ninety-one, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved June one, eighteen hundred ninety-three, as amended by acts numbered twenty-five, one hundred fifty-four one hundred sixty-two and two hundred ninety-nine of the Public Acts of eighteen hundred ninety-five, and acts numbered two hundred six, two hundred fourteen, two hundred twenty-four, two hundred twenty-five, two hundred twenty-nine, two hundred forty and two hundred sixty-one of the Public Acts of eighteen hundred ninety-seven and to add ten new sections thereto, to stand as sections one hundred forty-five, one hundred forty-six, one hundred forty-seven, one hundred forty-eight, one hundred forty-nine, one hundred fifty, one hundred fifty-one, one hundred fifty-two, one hundred fifty-three and one hundred fifty-four, providing for the creation of a Board of State Tax Commissioners, charged with the duty of enforcing this act, and exercising supervisory control over officers administering the general tax laws of this State and reporting to the Legislature thereon, and empowered in certain cases to review assessment rolls and correct the same or add thereto, and to provide for the assessment and taxation of property omitted from the assessment rolls.

*The People of the State of Michigan enact:*

Section 1. That act number two hundred six of the public acts of eighteen hundred ninety-three, entitled "An act to provide for the assessment of property, and the levy and collection of taxes thereon, and for the col-

lection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien providing for the sale and conveyance of lands delinquent for taxes, and for the inspection and disposition of lands bid off to the State and not redeemed or purchased, and to repeal act number two-hundred of the Public Acts of eighteen hundred ninety-one, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved June one, eighteen hundred ninety-three, as amended by acts numbered twenty-five, one hundred fifty-four, one hundred sixty-two, and two hundred ninety-nine of the public acts of eighteen hundred ninety-five, and acts numbered two hundred six, two hundred fourteen, two hundred twenty-four, two hundred twenty-nine, two hundred forty and two hundred sixty-one of the public acts of eighteen hundred ninety-seven, be and the same is hereby amended by amending sections twenty-one and twenty-two and adding thereto ten sections, to be known as sections one hundred forty-five, one hundred forty-six, one hundred forty-seven, one hundred forty-eight, one hundred forty-nine, one hundred fifty, one hundred fifty-one one hundred fifty-two, one hundred fifty-three and one hundred fifty-four, as follows:

Sec. 21. In every case when any person or member of any firm or officer of any corporation shall willfully neglect or refuse to make out and deliver a true and correct sworn statement, under oath, administered by the supervisor or other assessing officer or members of the Board of State Tax Commissioners herein provided for or other officers, or shall answer falsely or refuse to answer questions concerning his property or property under his control, as required by this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court. And it shall be the duty of the supervisor, assessing officer, and each member of the Board of State Tax Commissioners whenever he is satisfied that any person liable to make such assessing statements is justly liable to such penalty to report the case to the prosecuting attorney of the county and make proper complaint for such prosecution.

Sec. 22. If the supervisor or assessing officer or a

member of the Board of State Tax Commissioners shall be satisfied that any statement so made is incorrect, or if, by reason of absence or other cause, said sworn statement can not be obtained from the person, firm or corporation whose property is so assessed, said supervisor, assessing officer or any member of the Board of State Tax Commissioners is hereby authorized and required to examine, on oath, to be administered by any of them, any other person or persons whom he may have good reason to believe, and does believe has knowledge of the amount or value of any property owned, held or controlled by such person so neglecting or refusing or omitting to be examined or to furnish such statement, and such supervisor or assessing officer is hereby authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just.

Sec. 145. It shall be the duty of the Governor by and with the advice and consent of the senate, within five days after this act shall have been approved by the Governor, to appoint three resident free-holders of this State, who shall be duly qualified electors thereof who shall constitute a Board of State Tax Commissioners, with powers and duties as prescribed under the provisions of this act, one of whom shall hold office until the thirty-first day of December, nineteen hundred; one of whom shall hold office until the thirty-first day of December, nineteen hundred, and for two years thereafter; the other of whom shall hold office until the thirty-first day of December, nineteen hundred and for four years thereafter, or until their successors shall be appointed and have qualified, and thereafter their successors shall hold office for a term of six years, and until their successors shall be appointed and have qualified. At the expiration of the term of office of the members of said board, their successors in office so long as this act shall remain in force, shall be appointed by the Governor, by and with the advice and consent of the Senate. All appointments which are provided to be made by the Governor under this section of the act, shall be made while the legislature is in session and not at any other time except in cases where vacancies in office shall occur otherwise than by expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the Governor shall have the power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the legislature after such appointment, and no longer.

Sec. 146. Said board shall elect a secretary at a salary not to exceed fifteen hundred dollars per annum. The person so elected shall hold his office during the pleasure of said board and shall keep a record of all the proceedings of said board, which records with all other papers or proceedings of said board shall be a part of the records of the Auditor General's office, and of which the Auditor General shall be the lawful custodian. The secretary shall devote all his time to the duties of his office, and when said board is not in session, shall perform such duties as may have been assigned him by said board.

Sec. 147. The members of said board and the secretary thereof, shall take and subscribe the constitutional oath of office to be filed with the Secretary of State. The members of said board shall receive an annual salary of two thousand five hundred dollars, and shall devote their whole time to the discharge of the duties of their office, and they shall also receive their necessary expenses in the performance of their duties, both to be audited and allowed by the Board of State Auditors, and paid monthly by the State Treasurer, out of the general fund.

Sec. 148. Regular sessions of said board shall be held at the office of said board at the capitol, to be furnished by the Board of State Auditors. The said board and the members thereof shall have access to all books, papers, documents, statements and accounts on file or of record of any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of said board, and attested by the secretary thereof, directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the State upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to

examine books, papers or accounts of any corporation, firm or individual owning property liable to assessment, for taxes, general or specific, under the laws of this State, and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State Prison for a period not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

Sec. 149. Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. The chairman may call special sessions of the board whenever and wherever in the State he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

Sec. 150. It shall be the duty of said board:

1. To have and exercise general supervision over the supervisors and other assessing officers of this State, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this State liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value.

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the Governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the Attorney General or any prosecuting attorney in the State to assist said board.

3. To receive complaints as to property liable to taxation that has not been assessed, or has been fraudulently or improperly assessed, and to investigate the same, and

to take such proceedings as will correct the irregularity complained of, if found to exist.

4. To see that each county in the State be visited by at least one member of the Board as often as once each year, to the end that all complaints concerning the law may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

5. To require from any officer in this State, on forms prescribed by said Board of State Tax Commissioners, such annual or other reports as shall enable said Board of State Tax Commissioners to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the State under this act; the amount of taxes assessed, collected and returned delinquent, and such other matter as the Board may require, to the end that it may have complete and statistical information as to the practical operation of this act.

6. To inquire into and ascertain the valuation of the properties of corporations paying specific taxes under any of the laws of this State, and to ascertain the actual rate of taxation as based upon the valuation of said properties that is being paid by said corporations, and to this end said Board shall require reports from, and make investigations, as to the properties of such corporations in the same manner and to the same extent as if said corporations were paying taxes under this act.

7. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by published reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the legislature, at each regular session thereof, such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

8. To further report to the legislature at each regular session thereof or at such other times as the legislature may direct, the whole amount of taxes collected in the State for all purposes, classified as to State, county and

township and municipal purposes, with the sources thereof; the amount lost; the causes of the loss; the proceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

9. To further report to the legislature at the beginning of the regular sessions, specifically, the true valuation of the properties of corporations paying specific taxes and the rate of taxation actually paid on said valuation and the true valuation of all other properties of the State and the rate of taxation the same are paying, to the end that the legislature shall have the information necessary to rearrange the rate or system of taxation on said properties, so that all taxable properties of the State may be taxed uniformly.

10. To be present at each meeting of the State Board of Equalization and furnish such information as said Board may require and that may assist in the performance of the duties imposed upon it by law.

Sec. 151. The Board of State Tax Commissioners shall, on or before the fifteenth day of December in each year, make an annual report to the Governor of this State, setting forth the workings of said Commission during the preceding year, and containing the findings and recommendations of said Commission in relation to all matters of taxation. The Board of State Auditors shall cause five thousand copies of said annual report to be printed on or before the fifteenth day of January succeeding the making of said report. Three hundred copies of said report shall be placed at the disposal of the State Librarian for distribution and exchange.

Sec. 152. After the various assessment rolls required to be made under this act shall have been passed upon by the several boards of review, and prior to the time fixed for equalization and apportionment of State and county taxes, the said several assessment rolls in the State shall be subject to inspection by said Board of State Tax Commissioners or by any member thereof; and in case it shall appear, or be made to appear, to said Board that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said Board may issue an order directing the assessor whose assessments or failure to assess is complained against, to appear with his assessment roll at a time and place to be stated in said order, said time to be



not less than seven days from the date of issuance of said order, and the place to be at the office of the board of supervisors at the county seat or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided. A notice of the time and place that said assessor is ordered to appear with said roll, together with a statement of the persons whose property or whose assessments are to be considered shall be published in a newspaper published at the county seat of said county if there be one; if not, in some paper printed in said county if there be any, five days before the time at which said assessor is required to appear, and where practicable personal notice by mail shall be given to said persons prior to said hearing. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by the review of said assessments thus provided for may appear and be heard at said hearing. In case said board or the member thereof who shall act in said review, shall determine that the assessments so reviewed are not assessed according to the law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board or member thereof acting in said review, shall place the same upon said assessment roll by proper description, and shall place thereafter, in the proper column, the true cash value of the same. In case of review under the provisions of this section, the said board or the member thereof acting in said review shall certify under his hand officially and spread upon said roll a certificate of the day and date at which said assessment roll was reviewed by him, and the changes by him made therein. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him in the preparation of his assessment roll, to be presented to and paid by the proper officers of the municipality of which he is the assessing officer, in the manner as his other compensa-



tion is paid. The action of said board or member taken as provided in this act shall be final.

Sec. 153. In case it shall appear or be made to appear to said board that any assessment roll in the State is so grossly irregular and unlawfully assessed that adequate compliance with the law can not be secured except by a general review of said assessment roll, said board may make and issue an order that said assessment roll shall be subject to general review, and the time and place shall be stated in said order, at which said roll shall be reviewed, and under said order the assessor whose assessment or failure to assess is complained against shall be required to appear with his assessment roll at the time and place thus determined, said time to be not less than fourteen days from the issuance of said order, and the place to be at the office of the board of supervisors at the county seat, or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided for. A notice of the time and place that said assessor is required to appear with said roll, together with a statement that said roll will be subject to general review and that all persons interested therein may be heard at said time, shall be published in a newspaper published at the county seat of said county, if there be one; if not, in some paper printed in said county, if there be any, at least seven days before the time at which said assessor is required to appear. A copy of the order made as aforesaid shall be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there review said assessment roll and may hear and determine complaints as to the said assessment roll and the assessments of property therein, and he or they shall have power to determine in accordance with law, the amount at which said assessments shall be placed, and to change the same, so that said assessments may comply with the law. Also to place upon said roll property omitted therefrom in the same manner as provided in the last preceding section. The determination of said board or member thereof acting in said review shall be placed in a column provided for that purpose, and shall proceed in

all respects as provided in the last preceding section, and the supervisor or assessing officer shall receive the same compensation as provided in said section.

Sec. 154. If it shall be made to appear to said board at any time after the last meeting of the State Board of Equalization that any property liable to taxation has not been assessed for any previous year as hereinafter provided, the said board shall report the same to the proper assessing officer and the same shall be listed for taxation upon the next assessment roll that shall be made and shall be valued as all other property. The said board shall further certify to the board of supervisors of the several counties at the October session thereof, next after said property shall be then listed for taxation, the description of said property and the several years that the same has been liable for, and escaped taxation, and said board of supervisors shall ascertain the rate of taxation for said several years and shall order the taxes for said years to be spread against said property upon the valuation for the then current year, and the same shall be so spread in a column provided for that purpose, and it shall constitute a charge against the person and property, and be collected as other taxes: *Provided, however,* That this provision shall not be deemed to relate back prior to the going into effect of this section: *And provided further,* That in case of change in ownership of the property omitted said taxes shall not be spread against said property prior to the last change of ownership.

This act is ordered to take immediate effect.

Approved June 23, 1899.



**FILE COPY.**

FILED

FEB 13 1906

JAMES H. WICKENBY,  
Clerk.

---

---

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM. 1905.**

**No. 397.**

\_\_\_\_\_  
(With Nos. 402-487, inclusive)

\_\_\_\_\_  
**THE MICHIGAN CENTRAL RAILROAD COMPANY,  
APPELLANT,**

**vs.**

**PERRY F. POWERS, AUDITOR GENERAL OF THE STATE  
OF MICHIGAN.**

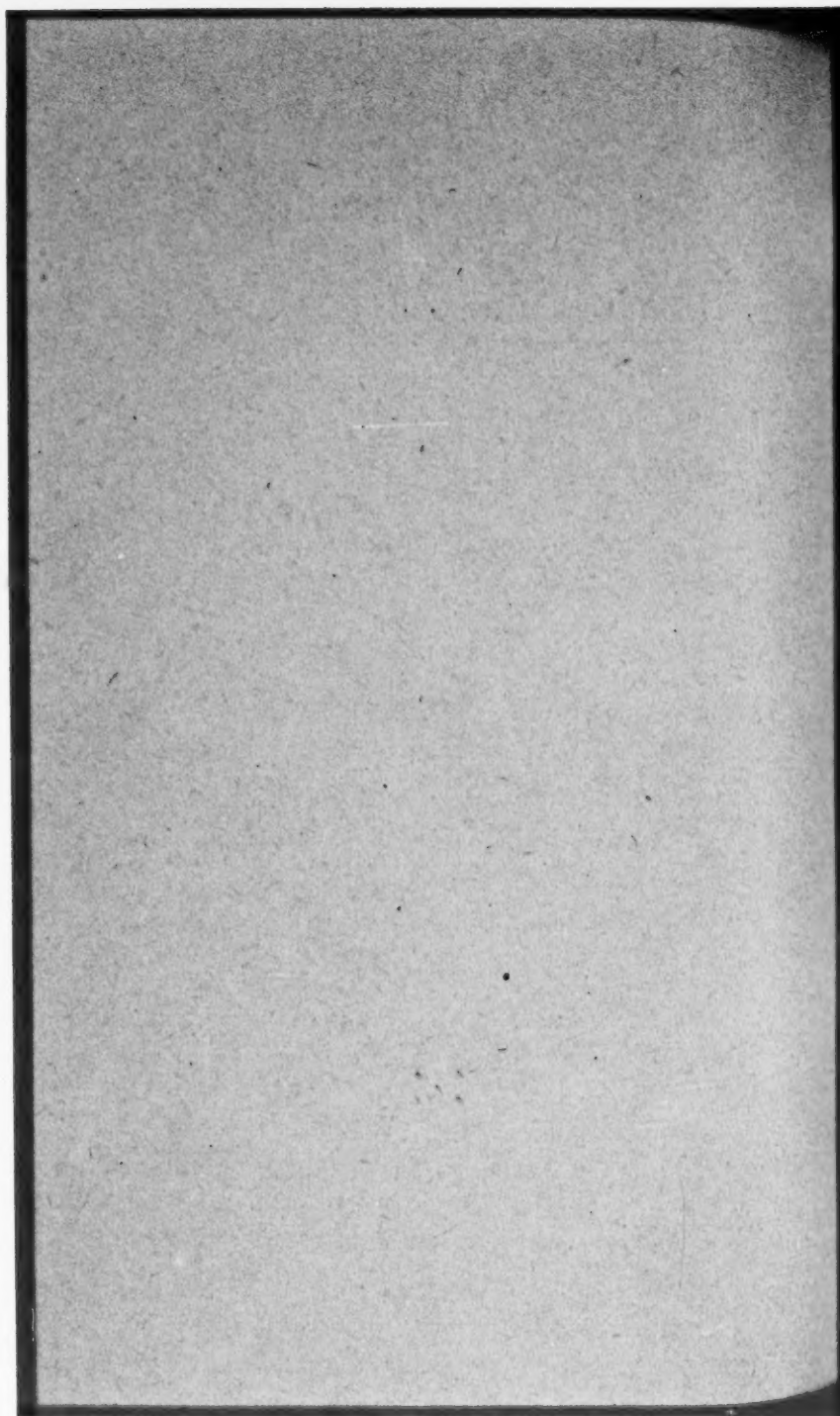
\_\_\_\_\_  
**Brief and Argument for the Appellee on the  
Constitutional and Associated Questions,**

**BY  
ROGER IRVING WYKES.**

\_\_\_\_\_  
**19,899.**

---

---



## TABLE OF CONTENTS.

	PAGE.
Statement .....	1
Assignments of Error, Outline of.....	9
List of Railways Complainant.....	11
Argument, Outline of.....	13
Argument .....	63
The Fourteenth Amendment in General, and the right of Classification .....	63
Classification made by Act 173.....	77
Railroad Companies, the Right to Classify Separately for Taxation Purposes .....	78
Separate Classification of Railroad Corporations, Specific Elements Permitting .....	85
Character of the Classification Made as Permitting that Classification .....	94
Specific Companies, Should their Property be included with that of Complainant.....	103
(a) Sleeping Car Companies.....	103
(b) Interurban Street Railway Companies.....	108
(c) Unincorporated Railroads .....	111
In General, Applying to the Failure to Include Sleeping Car Companies, Interurban Street Railways, and Unincorporated Railroads .....	114
Deduction of Debts from Credits to One but not Another Class, Discrimination Resulting from Permitting...	120
Rate not Dependent upon the Action of Local Assessing Officers .....	146

	PAGE.
Average Rate System not invalid as Compelling the Payment of Taxes Based on the Expenditures of Local Governments .....	156
Right of Hearing upon the Rate, Denial of the.....	162
A Higher Rate is not Imposed on the Corporations affected by Act 173.....	166
Equalization, The Neglect to Provide for, does not violate the Fourteenth Amendment.....	173
Rate not Fixed without a Legislative Determination of the Needs of the Community Receiving the Taxes or Fund Benefited .....	179
The Fourteenth Amendment is not violated in that Act 173 does not State the Tax or its Object.....	186
Due Process of Law; This System of Taxation does not Deprive of Property without.....	196
Interstate Commerce is not Interfered with.....	213
The Mileage Basis of Apportionment, and its Application in this case .....	219
Alteration, Amendment or Repeal of Corporate Charters, Act 173 is a Proper Exercise of the Right of.....	226
State Constitution, The System of Taxation Under Act 173 Does not Violate the.....	244
Appendix .....	257
Table of Cases.....	303

# SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

NO. 397.

(And Nos. 462-487 inclusive.)

---

THE MICHIGAN CENTRAL RAILROAD  
COMPANY,

*Complainant and Appellant,*

vs.

PERRY F. POWERS, AUDITOR GEN-  
ERAL OF THE STATE OF MICHIGAN,

*Defendant and Appellee.*

---

---

APPEAL FROM THE CIRCUIT COURT OF THE  
UNITED STATES FOR THE WESTERN  
DISTRICT OF MICHIGAN.

BRIEF AND ARGUMENT FOR DEFENDANT.

---

## Statement.

This is a proceeding to restrain the collection of taxes, upon the property of the complainant railroad company in Michigan, which were imposed by a state board of assessors, upon ad valorem assessments at the average rate imposed upon other property throughout the state subject to ad valorem assessment, under the state constitution as amended



"Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a State Board of Assessors." (§ 9 Act 173 of 1901.)

After the completion of each roll, the state board of assessors was required to meet at the state capitol, at Lansing, on the third Monday of December, in each year, and continue in session from day to day for so long a period as necessary, not later than the fifteenth day of January next thereafter, to review the assessment roll, and all persons or corporations interested were given the right to appear and be heard as to the valuation of their property, and the state board of assessors given authority to,

"on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal." (§ 10 Act 173 of 1901.)

The assessment roll, provided for, was prepared for 1902; review had in accordance with the statute, and opportunity given to all persons or corporations interested to appear and be heard in regard to their assessments.

By act 173 reports are required to be made by certain municipal officers to the state board of assessors, which place before it, prior to the fifteenth day of December, a statement of the amount of ad valorem taxes to be raised (for the current year) in the several municipalities of the state for state, county, municipal, township and school purposes, and a statement of the aggregate valuation of the property in the several municipalities of the state taken from the assessment rolls. From this data the rate of taxation, imposed under act 173, is ascertained.

The act also provides that the state board of assessors shall, not later than the fifteenth day of December in each year,

"ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined," (§ 12 Act 173, 1901) and that

"Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties; (§ 13 Act 173, 1901)

after which a certificate, in the form set forth in the bill of complaint, is required to be attached to said assessment roll, which

"said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer."

The average rate required to be ascertained by the state board of assessors under the provisions of said act 173 was originally determined for the year 1902 to be \$13.68905 on each one thousand dollars of valuation, the state board of assessors construing the statute requiring it to fix the average rate as authorizing it to make a relative adjustment between the property assessed under act 173 and that assessed throughout the state generally and permitting it to use as the divisor of the amount of levied taxes in reaching that rate, what it conceived to be, the actual rather than the assessed value of the general property of the state, and the tax was spread on that basis.

The average rate as first ascertained by the state board of assessors was determined by the state supreme court to be illegal as not having been ascertained and determined in the method prescribed by statute, and that board has been compelled to reconvene and reascertain and redetermine it; the court holding the duty imposed upon the board in regard to this rate to be ministerial, involving simply the mathematical computation of dividing the aggregate taxes levied in the state for state, county, township, school and municipal purposes by the aggregate assessed valuation of the property of the state. The rate as redetermined is \$16.55329 upon each one thousand dollars of valuation. A duplicate of the original assessment roll was prepared and the tax extended thereon according to such reascertained rate, the certificate and warrant required attached thereto, and the tax roll regularly delivered to this defendant.

The complainant paid its taxes pursuant to the law in force previous to the enactment of act 173 of 1901 (§ 6277 C. L. 1897), and filed its bill of complaint to restrain the collection of taxes under act 173 and the constitutional amendments on which it was based and setting forth the invalidity of the said amendments and statute and the assessments thereunder, and assigning numerous reasons therefor.

In addition to many objections to the system of taxation invoked by act 173 which present questions purely of law, the bill of complaint alleges that the general properties of the state other than railroad property, upon which taxes were assessed for state, county, township, school and municipal purposes were assessed at less than the true and actual cash value and at about eighty-two per cent thereof; that unincorporated persons, associations, partnerships and joint stock associations possess and operate railroads in Michigan and own property similar in character and engaged in the same business and owned under the same circumstances as

the railroad property of the complainant; that railroad companies, (among whom were some of the complainants in this and associated cases) operate sleeping cars, and that sleeping cars were also operated by corporations or institutions independent of railroads; that interurban and street railways and their properties are engaged in the same business as is complainant.

The defendant made answer to the bill of complaint which denies all statements setting up the unconstitutionality and invalidity of the constitutional amendments and act 173 of 1901 and the system of taxation invoked thereby, and in addition setting forth, in denial of allegations of the bill, that the general properties of the state, upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, were not assessed at less than their true and actual cash value, but were, for 1902, presumptively, conclusively and actually assessed at their true and actual cash value, and further setting forth that the properties of the complainant company, as assessed by the state board of assessors, pursuant to act 173, for the year 1902, were assessed at much less than the true and actual cash value thereof, and that the undervaluation of the railroad property was not the result of inadvertence, mistake or accident, but was intentional and fraudulent.

The answer also denies the allegations of the bill in regard to sleeping car, and interurban and street railway companies, and as to railroad ~~and~~ similar property to that owned and operated by complainant, being owned by unincorporated persons or institutions not subject to taxation under act 173. The material proof on these questions appears in the record.

Act 173 provides that in determining the true cash value of property of railroad companies in Michigan, the board shall be guided by the relation which the mileage of main

track in Michigan bears to the entire mileage of main track both within and without Michigan. (§ 8.)

All taxes collected under the act are to be applied in paying the interest upon the primary school, university, and other educational funds, and the interest and principal of the state debt in the order recited, until the extinguishment of the state debt other than the amount due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund.

Since 1850 the constitution (§ 1 *Art.* 15) of the state has contained a reservation of the right to alter, amend or repeal acts affecting corporations and the general railroad law (§ 11 art 5, § 6312 C. L. 1897), being a general act of incorporation under which the complainant is organized and of which the provisions of the previous law for the taxation of railroad companies at a specific rate of their gross income were a part, has also, since 1873, contained such a reservation.

The Michigan Constitution has always provided for the imposition of specific taxes, and such taxes have always been imposed, the legislature selecting as the subjects thereof such corporations and institutions as it saw fit.

Prior to 1901, railroad corporations were always classed by themselves, separate and distinct from other corporations and property for purposes of taxation.

The state has always imposed taxes both by the designation of an aggregate sum to be levied, and by designation of a certain rate per cent to be imposed, and this has taken the form of a continuing rate to be imposed year after year without new legislative action and has been applied to ad valorem taxes.

The circuit Court dismissed the bill of complaint of this complainant and also of 26 of the other railroad companies filing similar bills; holding act of 173 of 1901 and the

constitutional amendments and all proceedings had or contemplated thereunder to be legal and valid.

The complainant appeals to this court. The errors which it assigns will, for convenience of argument, be classified as follows:

# I.

The System of Taxation invoked by the act and constitutional provisions in question violates the fourteenth amendment of the Federal constitution in the denial of equal protection of the laws in that:

(A.) Corporations subject to act 173 are arbitrarily separated for taxation from others of the same character. (Assignment 7A.) *(Argued post p. 77.)*

(B.) Act 173 is applied only to the property owned by corporations to the exclusion of similar property similarly used and owned by natural persons. (A. 7k). *(Argued post p. 111.)*

(C.) The personal property and credits of complainant not used in, or incident to its railroad business, are taxed differently from the personal property and credits of others. (A. 7i and j.) *(Argued post p. 120.)*

(D.) The other owners of property taxed in Michigan are given the following rights, protections or benefits, which are denied to corporations taxed under Act 173:

(1.) Of having their debts deducted from their credits. (A. 7h.) *(Argued post p. 120.)*

(2.) Of having their taxes fixed by a representative legislature. (A. 7a, b, 4.) *(Argued post p. 146.)*

(3.) Of paying taxes based upon the expenditures of the state and municipalities to which their property belongs,

while the railroads, are taxed, under act 173, because of expenditures of local governments, whose benefits they do not share. (A. 7f.) (*Argued post p. 156.*)

(4.) Of having a hearing concerning the amount of their taxation. (A. 7e.) (*Argued post p. 162.*)

(5.) Of having equalization of their assessments. (A. 7g.) (*Argued post p. 173.*)

(6.) Of having their taxes fixed with reference to the needs of the community paying and receiving the taxes. (A. 7c.) (*Argued post p. 179.*)

(7.) Of having every tax law applying to their property "distinctly state the tax and the object to which it is to be applied," without reference, "to any other law to fix such tax or object." (A. 7m.) (*Argued post p. 186.*)

(E.) Discrimination results between the corporations taxed under act 173, as they exist in different municipalities where the tax rates are different, in that it requires the same rate of all railroad companies. (A. 7n.) (*Argued post p. 194.*)

(F.) Discrimination results in that the complainant's property was for 1902 assessed at its cash value, while the general property, the assessed value of which formed the divisor in reaching the average rate imposed upon complainant's property was assessed at only 82+ % of its value. A. 12.) (*Argued in Mr. Knappen's Brief.*)

## II.

That the system violates the provision of the Fourteenth amendment inhibiting the taxing of property without due process of law,

(1.) As the requirements of this provision of

(a.) The imposition of taxes by a representative legislature and

(b.) A hearing upon the rate of taxation,

are not observed as the taxes under act 173, instead of being imposed by a representative legislature, are imposed by officers of local municipalities who do not represent the complainant as to its property beyond the jurisdiction of such officers. (A. 6.) (*Argued post p. 200 et seq., 146 et seq., 162 et seq.*)

(2.) In that the moneys demanded of complainant are not a tax but an arbitrary, enforced contribution amounting to a taking of private property for public use. (A. 6.)

(*Argued post p. 212.*)

### III.

The system in question violates section 8 of article 1, of the Federal constitution, in that it regulates commerce between the states. (A. 3.) (*Argued post p. 213.*)

### IV.

The system in question violates the state constitution in

(1.) That the state constitution requires uniformity of assessment of all property subject to ad valorem assessment, whether taxed at the average rate or generally, and that the system under act 173 violates that uniformity by permitting the deduction of debts to property generally but not to that taxed under act 173. (A. 8, 9.) (*Argued post p. 244, 249.*)

(2.) That act 173 violates Sections 10 and 12 of Article XIV of the state constitution requiring assessments at cash value. (A. 10, 11.) (*Argued post p. 247, 249.*)

**Note:**—Similar bills of complaint were filed against the same defendant by railroad companies complainant as follows:

Pere Marquette Railroad Company, et al.;

Chicago, Milwaukee & St. Paul Railway Co.;

The Minneapolis, St. Paul & Sault Ste. Marie Railway Co.;



Grand Rapids & Indiana Railway Co.;  
 Wisconsin & Michigan Railway Co.;  
 Lake Shore & Michigan Southern Railway Co., et al.;  
 Chicago & Northwestern Railway Co.;  
 Chicago, Detroit & Canada Grand Trunk Junction Rail-  
 road Co.;  
 Duluth, South Shore & Atlantic Railway Co.;  
 Michigan Air Line Railway Co.;  
 Grand Trunk Western Railway Co.;  
 Cincinnati, Saginaw & Mackinaw Railroad Co.;  
 Toledo, Saginaw & Mackinaw Railroad Co.;  
 Pontiac, Oxford & Northern Railroad Co.;  
 Escanaba & Lake Superior Railroad Co., et al.;  
 Ann Arbor Railroad Co., et al.;  
 Copper Range Railroad Co., et al.;  
 Mineral Range Railroad Co., et al.;  
 Lake Superior & Ishpeming Railway Co., et al.;  
 Marquette & Southeastern Railway Co., et al.;  
 Gogebic & Montreal River Railroad Co., et al.;  
 Munising Railway Co., et al.;  
 Detroit & Mackinac Railway Co.;  
 Detroit, Grand Haven & Milwaukee Railway Co.;  
 St. Clair Tunnel Company;  
 Sault Ste. Marie Bridge Co.;  
 Manistee & North Eastern Railroad Co.

The cases were heard together in the circuit court and (except in the case of the Detroit, Grand Haven & Milwaukee Railway Co., in which special facts appear) the bills were dismissed. Appeals in all the cases (except the Pere Marquette) have been taken to this court. The cases will be heard together, the record in each being supplemented by the record in this case.

## OUTLINE OF THE ARGUMENT.

### First.

**A. *The power of taxation in general.*** The taxing power of the state is one of its highest attributes of sovereignty and essential to its continued existence. *Argument p. 63.*

Union Pacific R. R. Co. v. Peniston, 18 Wall, (85 U. S.) 5, 29, 30;

McCulloch v. State, 4 Wheaton, (17 U. S.) 316, 428;

Picard v. East Tennessee, etc., R. R. Co., 130 U. S. 641;

Weston v. Charleston, 2 Peters (27 U. S.), 466;

Providence Bank v. Billings, 4 Peters (29 U. S.), 516, 563.

**B. *The fourteenth amendment in general.*** The fourteenth amendment was not designed or intended to limit the taxing power of the states. *Argument p. 63.*

Slaughter House Cases, 16 Wall, (83 U. S.) 36, 81;

Delaware Railroad Tax, 18 Wall, (85 U. S.) 206.

**C. *Presumptions favor the validity of taxing statutes.*** The presumption of constitutionality following taxing statutes is stronger than applies to laws generally and only where a taxing system clearly and palpably violates the fundamental law will it be held invalid. *Argument p. 65.*

Henderson Bridge Company v. Henderson City, 173 U. S. 592, 614, 615;

King v. Mullins, 171 U. S. 404, 435, 436;

Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 562, 563;

San Diego Land & Town Co. v. National City, 174 U. S. 754;

Florida Central, etc. R. R. Co. v. Reynolds, 183 U. S. 479;

Central Pacific R. R. Co. v. Evans, 111 Fed. 76.

*D. Classification is permitted.* The fourteenth amendment to the Federal constitution was not designed or intended to prevent the state from adjusting its system of taxation in all proper and reasonable ways, nor intended to compel it to adopt an iron rule of equality, to prevent the classification of property for purposes of taxation or the imposition of different rates upon different classes; but permits classification for purposes of taxation, the application of different rules of assessment, valuation and review to different classes and the imposition of different rates thereon; and it is sufficient that all persons within the same class are treated alike and that there is no discrimination in favor of one as against another of the same class. *Argument p. 66.*

Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232;

Giozza v. Tiernan, 148 U. S. 657, 662;

Adams Express Co. v. Ohio, 165 U. S. 228;

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293;

Billings v. Illinois, 188 U. S. 97, 102, 103.

The state may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion.

Merchants & M. Nat. Bank v. Pennsylvania, 167 U. S. 461;

Kentucky Railroad Tax Cases, 115 U. S. 321;

Home Insurance Co. v. New York, 134 U. S. 594;

Gulf, etc., Ry. Co. v. Ellis, 165 U. S. 150;

Clark v. Titusville, 184 U. S. 329;

American Sugar Refining Co. v. Louisiana, 179 U. S. 89;

New York v. Barker, 179 U. S. 279;

Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;

Travelers Life Ins. Co. v. Conn., 185 U. S. 364;

Kidd v. Alabama, 188 U. S. 730;

Cook v. Marshall County, 196 U. S. 269;  
 Coulter v. Louisville & N. R. Co. 196 U. S. 608, 609;  
 Field v. Barber Asphalt Paving Co., 194 U. S. 621, 2.

*E. Limitations upon the power of classification.* The limitations upon this power require it to rest upon some difference, bearing a just and reasonable relation to the act in respect to which the classification is proposed, and it is enough that there is no discrimination in favor of one as against another of the same class. *Argument p. 71.*

Gulf etc. Ry. Co. v. Ellis, 165 U. S. 155;  
 Missouri v. Lewis, 101 U. S. 22;  
 Barbier v. Connolly, 113 U. S. 27;  
 Duncan v. Missouri, 152 U. S. 377, 382;  
 Bell's Gap Ry. Co. v. Pennsylvania, 134 U. S. 232;  
 Home Life Insurance Co. v. New York, 134 U. S. 594;  
 Pacific Express Co. v. Seibert, 142 U. S. 339.

*F. Comparison of power of taxation with other powers.* Different rules apply to, and 'fix and limit the power of classification in cases of taxation than in other cases.

*Argument p. 72.*

Connolly v. Union Sewer Pipe Co., 184 U. S. 562,  
 563;  
 American Sugar Refining Co. v. Louisiana, 179 U.  
 S. 89;  
 Magoun v. Illinois Trust & Savings Bank, 170 U. S.  
 283;  
 Billings v. Illinois, 188 U. S. 102;  
 Cook v. Marshall County, 196 U. S. 274.

## Second.

*The classification made by act 173 is based upon such reasonable differences of property, situation, circumstance, or use, as to satisfy the requirements of the fourteenth amendment.*

*Argument p. 77.*

A. That the fourteenth amendment, as applied to railroad and other public service corporations, permits separate classification of those corporations and their property, for purposes of taxation, must be regarded as placed at rest by the cases, and the laws of the several states have uniformly provided separate and distinct systems and rules of taxation for railroad property, which have been generally sustained:

State Railroad Tax Cases, 92 U. S. 575.

Kentucky Railroad Tax Cases, 115 U. S. 321 (81 Ky. 492, 512);

Columbus Sn. Ry. Co. v. Wright, 151 U. S. 470,—  
s. c. 89 Ga. 574;

Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;

Pittsburgh, C. C. & St. L. Ry. Co. v. Backus, 154  
U. S. 421,—s. c. 133 Ind. 625;

Northern Pacific R. R. Co. v. Barnes, 2 N. D. 310,  
395, 396, 397;

McHenry v. Alford, 168 U. S. 651, 665, 673;

Florida, etc. R. R. Co. v. Reynolds, 183 U. S. 480;

Missouri River, etc. R. R. Co. v. Morris, 7 Kan. 210;

State Board of Assessors v. Central R. R. Co., 48  
N. J. L. 146, 278, 280, 290, 300, 313;

Central Iowa Ry. Co. v. Board of Supervisors, 67  
Iowa 199;

City of Dubuque v. C. D. & M. R. R. Co., 47 Iowa  
200;

Owensboro & N. Ry. Co. v. Davies County, 3 S. W.  
(Ky.) 164;

Ames v. People, 56 Pac. (Col.) 656;  
 Yazoo & M. V. R. Co. v. Adams, 25 So. 355;  
 Louisville & N. R. Co. v. City of L., 29 S. W. (Ky.)  
 865;  
 St. Louis, etc. Ry. Co. v. Worthen, 52 Ark. 529;  
 Chamberlain v. Walter, 60 Fed. 788;  
 Sawyer v. Dooley, 21 Nev. 390, 398;  
 State v. Severence, 55 Mo. 378;  
 Elliott on Railroads, § 740 and cases cited;  
 Cooley on Taxation (3rd. ed.) 72 et seq.  
 Guthrie on the Fourteenth Amendment, p. 113 and  
 cases.

(1.) Railroad corporations possess franchises of a character peculiar to themselves and different from those possessed by other corporations as follows: *Argument p. 85.*

- (a) the right of eminent domain;
- (b) perpetual existence;
- (c) the use of public property, (*C. L.* 1897, § 6234);
- (d) the right of succession to franchises of existing corporations is permitted to purchasing corporations, (*C. L.* 1897, § 6224);
- (e) power to enforce connections with other companies;
- (f) the sale value of franchises is recognized by statute and provision is made for their transfer. (*C. L.* 1897, §§ 6328, 6331, 6333, 6339, 6341.)

(2.) The intangible value attaching to railroad property differs from that attached to property generally:

*Argument p. 86.*

- (a) it exists in more permanent character with railroad than other corporations (*Rec.* 497);

(b) the railroad corporation's business is, in a sense, monopolistic, (*Rec.* 497);

(c) railways are peculiarly benefited by the growth of the territory in which they exist, (*Rec.* 497);

(d) in railway business, economies are made possible by increased density of traffic. (*Rec.* 497.)

(3.) The railway corporation is engaged in rendering a public service in which the state itself might engage and to which it may attach such limitations as it chooses.

*Argument p. 87.*

*Cotting v. Goddard*, 183 U. S. 93, 94.

(4.) The property of railroad corporations exists as a connected whole in a large number of municipalities, rendering it impossible to reach its actual value through assessment and taxation as other property is assessed and taxed.

*Adams Express Co. v. Ohio*, 166 U. S. 219;

*S. V. R. R. Co. v. Supervisors*, 78 Virginia 279;

*Rorer on Railroads*, p. 1499, § 14.

*City of Dubuque v. C. D. & M. Ry.*, 47 Iowa 202.

*State Board of Assessors v. Central Railroad*, 48 N. J. L. 322.

*See Briefs in California & Pacific R. R. Co.*, 127 U. S. 1.

(5.) As a public service corporation, the railroad has received public aid to a large extent. *Argument p. 91.*

(6.) Perpetual existence is denied to other corporations (*Mich. Con.*, § 10, Art. XIV.) *Argument p. 91.*

(7.) The right to alter, amend, or repeal is reserved in

the charter under which Michigan railroad corporations do business; this permits different treatment for taxation purposes, as long as fundamental rights are not interfered with.

*Argument p. 91.*

St. Louis I. M. & S. Ry. Co. v. Paul, 173 U. S. 408, 409.

(8.) The usage and practice in Michigan has always been to tax railroad corporations by a distinct rule or system. Such requirements as proceed "within reasonable limits and *general usage* are within the discretion of the legislature."

*Argument p. 92.*

American Sugar Refining Co. v. Louisiana, 179 U. S. 94;  
Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 233;  
Magoun v. Illinois Trust & Savings Bank, 170 U. S. 294.

The same principles which permit the taxation of railroad corporations by a specific system allow its separate treatment for the purposes of an ad valorem system. The specific tax has been uniformly sustained.

Delaware Railway Tax, 18 Wall. (85 U. S.), 206, 231;  
McHenry v. Alvord, 168 U. S. 651;  
Northern Pacific R. R. Co. v. Barnes, 2 N. D., 310, 395.

(9.) The rates of railroad companies are and have always been regulated by the state. (*Con. Art. XIX A. § 1; Sub. Ninth, § 9, Art. II, Mich. general railroad law, § 6234, C. L. 1897.*)

*Argument p. 93.*

The differences above pointed out between the property, business, privileges and franchises possessed by railroad cor-



porations from those possessed by other property owners and individuals, are such as to justify their separate classification for taxation or other purposes. The fact of difference appearing, the question of the propriety of the classification is one of policy for the legislature.

B. Numerous elements exist in the classification made, which justify the legislature in making it:

(1.) No claim is made in the pleadings or the lower court that property other than railroad property was possessed by complainant or included in its assessment. *Argument p. 94.*

(2.) The purpose of act 173 is to subject to its provisions, and to the system of taxation which it invokes, only property engaged in railroad business. (§ 5, 9, act 173 of 1901.) *Argument p. 94.*

Section 5 of act 173 of 1901 construed by the rule that general, following special words are to be confined to things *ejusdem generis* is limited to railroad property.

American Transportation Co. v. Moore, 5 Mich. 368,

24 Howard 1;

McDade v. People, 29 Mich. 50;

Brooks v. Cook, 44 Mich. 617.

The system of taxation under act 173 was intended to cover the same property previously taxed specifically. This was property engaged in railroad business. (§ 6277; 3830 clause 8, C. L. 1897 and § 11, act 235 of 1903.)

Classification of railroad property, for the application of different systems of taxation, based on the nature of its use, is proper.

Northern Pac. R. R. Co. v. Walker, 47 Fed. 685, 686;

McHenry v. Alford, 168 U. S. 668, 669;

Stearns v. Minnesota, 179 U. S. 223.

If property was possessed by complainant, and included in its assessment, which was not engaged in its railroad business, it was its duty to disclose the fact.

*Adams Express Co. v. Ohio*, 166 U. S. 223.

(3.) The railroad property is made a separate class for the purpose of the imposition of a separate and distinct tax. This warrants its being made the subject of a separate system of taxation.

*Argument p. 99.*

*Travellers' Life Ins. Co. v. Connecticut*, 185 U. S. 364.

C. Numerous statutes, limited in operation to railroad corporations, have been sustained,—

*Minneapolis, etc. Ry. Co. v. Herrick*, 127 U. S. 210;

*Tullis v. Lake Erie & Western R. R. Co.*, 175 U. S. 348;

*Missouri Pacific Ry. Co. v. Humes*, 115 U. S. 512;

*Louisville & N. Ry. Co. v. Tenn. Ry. Com.*, 19 Fed. 679.

*See also*, *Commonwealth v. Sharon Coal Co.*, 164 Penn. St. 284; 304;

*New York v. Barker*, 179 U. S. 279.

D. Railroad companies have always been regarded as special subjects of classification for other purposes than taxation, notwithstanding the more stringent rule of classification for other purposes.

*Minneapolis, etc. Ry. v. Beckwith*, 129 U. S. 26;

*Missouri Pacific Ry. v. Mackey*, 127 U. S. 205;

*Minneapolis & St. L. Ry. v. Herrick*, 127 U. S. 210;

*Atchison T. & S. F. R. R. v. Matthews*, 174 U. S. 96;

*St. Louis, etc. Ry. v. Paul*, 173 U. S. 404;

*Chicago, B. & Q. Ry. v. Chicago*, 166 U. S. 258;

*McCandless v. Richmond, W. D. R.*, 18 L. R. A., 440;

Schoolcraft, Admr. v. Louisville N. R. Co., 92 Ky. 233;  
 Georgia R. R. & Banking Co. v. Miller, 90 Ga. 571;  
 Minn. & St. L. R. Co. v. Emmons, 149 U. S. 364;  
 New York & N. E. R. R. Co. v. Bristol, 151 U. S. 556;  
 Clark v. Russell, 97 Fed. 900,—C. Ct. A.;  
 Gulf, etc. R. R. Co. v. Ellis, 165 U. S. 150;  
 Missouri, Kansas & Texas Ry. v. May, 194 U. S. 269;  
 Central Pacific Ry. v. Evans, 111 Fed. 76.

### Third.

*Should the property of specific companies, or of specific character, have been classed with that of complainant to render the statute constitutional.*

**A. Sleeping car companies.** The property of such corporations and the business in which they are engaged are different from those of the railroad company. They do business under different circumstances and conditions and are properly taxed by different systems. *Argument p. 103.*

Pacific Express Co. v. Seibert, 142 U. S. 354;  
 Western Union Telegraph Co. v. Indiana, 165 U. S. 304;  
 Pacific Express Company v. Seibert, 44 Fed. 310, 316;  
 Pullman Southern Car Co. v. Gaines, 3 Tenn. Ch. 587;  
 Robbins v. Taxing District, 81 Tenn. 309;  
 Gibson County v. Pullman Southern Car Co., 42 Fed. 574;

**Contra:**

Car Company v. Texas, 64 Texas, 274.

The business of an institution or its property is to be classified for taxation with reference to its entire business,

rather than by a comparison with some other business or property which is engaged, in part in, or, in part of, the same business.

American Sugar Refining Co. v. Louisiana, 179 U.

S. 95;

Cook v. Marshall County, 196 U. S. 274, 275.

**B. Interurban street railways.** The property of these companies forms a different class for taxation purposes than that of the railroad corporation engaged in its railroad business as the use of the property belonging to the two institutions is different. *Argument p. 108.*

*See* Erb v. Morasch, 177 U. S. 584;

Savannah T. & I. Ry. v. Mayor, 198 U. S. 392.

Classification distinguishing street from steam railroads has been held valid as based on reasonable differences.

Kentucky Railroad Tax Cases, 115 U. S. 337.

*See also*, Jersey City v. B. Ry. Co., 65 N. J. L. 501;

Camden & A. R. Co. v. Atlantic City, 58 N. J. L. 316—affirmed 41 Atl. 1116;

Lookout Incline & L. E. R. R. v. King, 59 S. W. 805;

Cedar Rapids & M. C. Ry. v. City of C. R., 106 Iowa 476.

Questions of whether, in the construction of particular statutes, street railroads are included within the term "railroads" are considered in many cases which indicate that it has never been considered essential to classify the two together and that they are in fact different in character.

Mass. Loan & Trust Co. v. Hamilton, 11 Am. & Eng.

R. R. Cases (N. S.) 771; 88 Federal, 588;

Fidelity Loan & Trust Co. v. Douglas, 9 Am. & Eng.

R. R. Cases (N. S.) 713, 716, 717; 104 Iowa, 536;

Cordray v. Savannah, etc. Ry., 30 Am. & Eng. R. R.

Cases (N. S.) 286;

Savannah, etc. Ry. Co. v. Williams, 30 Am. & Eng. R. R. Cases (N. S.) 279;

State v. Duluth Gas & Water Company, 76 Minn. 76;

Riley v. Galveston City Ry. Co., 13 Texas Civ. App. 247;

Louisville & P. R. R. Co. v. Louisville City Ry. Co., 2 Duv. (Ky.) 175;

Front St. Cable Co. v. Johnson, 47 Am. & Eng. R. R. Cases (N. S.) 287.

Street railways have, in Michigan, always been subjected to separate rules of taxation from steam railroads—The street railway paying its fair proportion of the public burden; the steam railroad enjoying partial exemption through the payment of specific taxes. This, in a new taxing system, justifies different classification of these institutions.

Railroad Co. v. Harris, 99 Tenn. 706, 707;

Kidd v. Ala., 188 U. S. 732.

The result of complainant's contention that steam and interurban street railways are to be classified together, is that all steam railroads and street railways must be similarly taxed. The interurban railway may possess elements of both the steam railroad and the street railway. It is a question of legislative judgment to determine with which it will be classed.

C. *Unincorporated railroads* in Michigan are not engaged in the same business as is the property of complainant.

*Argument p. 111.*

The only unincorporated railroads which exist here, operate principally in carrying on a private business, such as a lumbering business, and operate the railroad owned only as incident to their principal business and carry freight for other persons, if at all, under conditions dissimilar to those ex-

isting and practiced with reference to, or by, the incorporated railroads engaged in the business of common carriers.

*See Record, pp. 200, 224, 384, 399, 401, 417.*

(1.) The entire value of the property of the unincorporated roads is less than \$150,000.00 and their entire annual business for persons other than the owner would be limited to less than \$2,000.00.

*See Mercantile Bank v. New York, 121 U. S. 161, 162.*

(2.) The fact that one class is engaged principally in carrying on business for itself, while the other is engaged almost exclusively in carrying on a general business for others is, of itself, a basis of distinct classification.

*Argument p. 113.*

*Dayton v. Coal & Iron Co., 99 Tenn. 578, 581;*

*Billings v. Illinois, 188 U. S. 102.*

(3.) That railroad property has always enjoyed a partial exemption from taxation, the present change in the taxing system being for the purpose of bringing it to the same basis for taxation purposes as other property, justifies its separate classification from property which has not enjoyed this partial exemption.

*Argument p. 113.*

*Railroad Co. v. Harris, 99 Tenn. 706, 707;*

*Kidd v. Alabama, 188 U. S. 732.*

**D. Applying in general to the failure to include sleeping car companies, interurban street railways and unincorporated railroads.**

*Argument p. 114.*

(1.) If necessary to classify railroads with these institutions for taxation purposes it would be necessary to classify them together for the purpose of police regulations.

(2.) Classification among railroads, based upon differences in the amount of gross earnings, in the territory in which they operate, in the length or amount of mileage, etc., has always been permitted. *Argument p. 114.*

Commissioner of Railroads v. Wabash R. R. Co., 123 Mich. 669;

San Francisco & N. P. Ry. Co. v. Board of Equalization, 60 Cal. 12;

Chicago B. & Q. v. Iowa, 94 U. S. 155;

Wellman v. Chicago & G. T. Ry. Co. 83 Mich., 592, 599;

Dow v. Biedelman, 125 U. S. 680; 49 Ark. 335, 294;

Tullis v. Lake Erie & Western Ry. Co., 175 U. S. 351;

St. Louis & I. M. & S. Ry. Co. v. Paul, 173 U. S. 406.

Even if these institutions be regarded as engaged in railroad business, classification among them would be permitted.

(3.) Instead of being injured by the separate classification of these institutions, the complainant has, in fact, been materially benefited. The classification can only be complained of if complainant has been injured. *Argument p. 115.*

Cummings v. National Bank, 101 U. S. 160;

Clark v. Kansas City, 176 U. S. 118;

Supervisors v. Stanley, 105 U. S. 305.

(4.) The differences between the system applied to complainant's property and these other institutions is rather of form than substance, and of such character that complainant has waived its right to complain through incorporation under a law reserving the right to alter, amend and repeal.

*Argument p. 116.*

St. Louis & I. M. & S. Ry. Co. v. Paul, 173 U. S. 406;

Leep v. Railway Co., 58 Arkansas 407.

(5.) The fourteenth amendment permits exemptions. The legislature could have exempted the property of these other institutions absolutely, while taxing that of complainant. The principles permitting this, permit also its taxation at different rates and according to different systems.

*Argument p. 117.*

Florida Central, etc. R. R. Co. v. Reynolds, 183 U. S. 480;

Missouri v. Dockery, 171 U. S. 170, 171;

Billings v. Illinois, 188 U. S. 97;

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283;

American Sugar Refining Co. v. Louisiana, 179 U. S. 89;

Cook v. Marshall County, 196 U. S. 274.

#### Fourth.

##### I.

*The fourteenth amendment is not violated in permitting the deduction of debts from credits to property owners generally but not permitting the deduction under act 173.*

*Argument p. 119.*

A. If the classification made by act 173 is proper, different rules of valuation, assessment and review applying to, and the imposition of different rates of taxation upon, the several classes is permissible and the deduction of debts from credits, in one but not in another class, is proper. *Argument p. 120.*

Travellers' Life Ins. Co. v. Connecticut, 185 U. S. 364.

B. Act 173 does not tax the property of the railroad corporation simply because of railroad ownership but because it is engaged in a particular use in the carrying on of a particular business.



(1.) Railroad corporations in Michigan are not expressly permitted to own property not engaged in railroad business.

*Argument p. 121.*

(2.) Railroad credits are railroad property and the nature of their use affects them as fully for taxation purposes as does the use of other property affect it. *Argument p. 122.*

Detroit, Grand Rapids & Western R. R. Co. v. Railroad Com's. 119 Mich. 132;

Chamberlain v. Walter, 60 Fed. 788, 793;

Franklin County v. Nashville, etc. Ry. Co. 12 Lea, (Tenn.) 521, 537;

Adams Express Co. v. Ohio, 166 U. S. 185;

McHenry v. Alford, 168 U. S. 651, 656.

(3.) The only credits shown by the record to be possessed by railroad corporations are those arising in the railroad business; presumptively all the property of a corporation is engaged in its business. *Argument p. 125.*

Adams Express Co. v. Ohio, 166 U. S. 223; 165 U. S. 227.

C. Act 173 makes no specific requirement of the taxation of credits without deduction for debts; if deduction be necessary to render the statute constitutional the statute must be construed in connection with the constitutional requirements as permitting the deduction. *Argument p. 125.*

First Nat. Bank of St. Joseph v. St. Joseph, 46 Mich. 529.

(2.) The state board of assessors in making this assessment did not include credits (*Rec.* 431-438.) This, taken as a contemporaneous construction, is entitled to consideration.

*Argument p. 126.*

Attorney General v. Glaser, 102 Mich. 405.

(3.) Under any method of valuation, it was possible for the board of assessors to make the assessment without including credits. *Argument p. 127.*

*See Record 498, 499, 500; 613, 639; 660, 884.*

(4.) If act 173 could be construed as subjecting credits of the corporation, taxed thereunder, to taxation without deduction for indebtedness, and so construed invades rights of complainant, such provision could be eliminated without disturbing the statute. *Argument p. 128.*

*Supervisors v. Stanley, 105 U. S. 305;*

*Evansville Bank v. Britton, 105 U. S. 322;*

*Hill v. Exchange Bank, 105 U. S. 319, 322;*

*Insurance Co. v. Board of Assessors, 95 Mich. 468;*

*State v. Smiley, 65 Kansas 265;*

*Pullman State Bank v. Manring, 18 Wash. 255;*

*State v. Duluth Gas & Water Co. 78 N. W. (Minn.)*

1032.

D. If the state board of assessors, in making assessment, included credits not a part of the railroad business, it exceeded its authority. It is clear that it did not.

*Argument p. 130.*

(2.) Complainant made no claim at the time of assessment or on review that it possessed, or that there was included in assessment, credits representing investments apart from the railroad business, nor is there any proof that it possessed such property. *Argument p. 130.*

(3.) Complainant made no complaint of the inclusion of its credits without deduction for debts owed by it, and made no application to the board of review for a deduction on account of indebtedness. It is not open to it now, to claim an unwarranted inclusion of credits. *Argument p. 130.*

*First Nat. Bank of St. Joseph v. St. Joseph, 46 Mich.*

526;

Central Pacific Ry. Co. v. California, 162 U. S. 128;  
 Pittsburgh, etc. P. R. Co. v. Backus, 154 U. S. 421;  
 Township of Caledonia v. Rose, 94 Mich. 216;  
 State v. Clark, 79 N. W. (Minn.) 829;  
 Stanley v. Supervisors of Albany, 121 U. S. 535;  
 Hepburn vs. School Directors, 90 U. S. 480.

E. The deduction of debts from credits is nothing more or less than an exemption. It does not amount to a rule of valuation. *Argument p. 132.*

F. The propriety of permitting a deduction of debts from credits to one and not to another class, and the effect of the resulting discrimination, has never, in an applicable case, been passed upon by this court. Mr. Justice Field, sitting in circuit in California, did pass upon a very similar proposition in the cases of: *Argument p. 132.*

San Mateo County v. Southern Pacific R. R. Co., 13 Federal, 722, 145;

Santa Clara County v. Southern Pacific R. R. Co., 18 Fed. 385.

(1.) The cases last referred to differ from that at bar in:

(a) Here the deduction of debts from credits amounts simply to an exemption to one class which may not be permitted to another. Where the classes are properly formed, it is permissible to give exemptions to one not given to another class.

*Argument p. 133.*

Florida Central, etc. Ry. Co. v. Reynolds, 183 U. S. 480;

Missouri v. Dockery, 191 U. S. 170, 171;

Opinion of Circuit Judge, Record 849, 848.

(b) The Michigan system is limited to taxing by a special system, the property of railroad cor-

porations engaged in their separate and peculiar business.

(c) In the California cases the effect was to cause the railroad corporation to bear the burden of taxation of the mortgagees or bondholders.

*Argument p. 134.*

(2.) The decisions of Judge Field are not in accord with the later decisions of this court which have made clear the character and extent of the application of the fourteenth amendment in matters of taxation.

*Argument p. 135.*

(3.) Since Mr. Justice Field's opinion, this court has decided, that

*Argument p. 136.*

(a) Property engaged in railroad business may be made a special class for taxation purposes.

(b) Different rates and rules of valuation, assessment and review, may be applied to the different classes.

(c) It is not essential that the assessments in the different classes be at the same rate, or that the valuation be reached by a common ratio.

(d) Other and different rules of classification are proper and may be applied by a state in a taxing system than in classification for other purposes.

(e) Deductions can be made and elements considered in reaching the values in one class that are not made, or considered in another.

(f) Once a proper classification is made, so far as the fourteenth amendment is concerned, the classes are thereafter separate and distinct, subject to different treatment in every respect in the legislative discretion, including the right to wholly exempt one class while taxing another.

(g) Property covered by the railroad mortgage is engaged in a railroad use which justifies a different classification.

(h) Classification may be made on the basis of use by quasi public corporations.

(4.) Judge Field's decisions have never been followed in California. The constitutional provision, which he declared unconstitutional, is still followed, and taxes imposed in accordance therewith are paid without protest. (*Rec. p. 475.*)

*Argument p. 139.*

Central Pacific R. R. Co. v. California, 162 U. S. 91, 117.

(5.) The chronological history of the decisions of Judge Field, in the San Mateo and Santa Clara County cases in connection with the Albany Bank cases, shows that this court has expressly refused to recognize the decisions of Judge Field as entitled to consideration, in opposition to the rule declared in the Albany Bank cases.

*Argument p. 139.*

San Mateo County v. Southern Pacific R. R. Co., 13 Federal, 722, 145;

Santa Clara County v. Southern Pacific R. R. Co. 18 Federal, 385;

Supervisors v. Stanley, 105 U. S. 305;

Hills v. Exchange Bank, 105 U. S. 319, 322;

Evansville Bank v. Britton, 105 U. S. 322;

Supervisors v. Stanley, 121 U. S. 535.

G. If it is not permissible to grant deduction of debts from credits to one class, unless it is granted to all classes, the result is not the unconstitutionality of act 173, but rather of the provision of the general tax law, permitting deduction from credits only, and not permitting similar deduction from other personal property. This invalidity might result

under the provision of the state constitution<sup>1</sup> requiring uniformity, the provision requiring assessments at cash value and the fourteenth amendment. *Argument p. 142.*

State statutes permitting deduction of debts from credits, not permitting the deduction from other personalty, have been held invalid.

*In re Construction of Revenue Law*, 48 N. W., 813 (S. D.) etc.;

*In re Assessment and Collection of Taxes*, 54 N. W. 818, (S. D.);

*Standard Life & Accident Association v. Assessors*, 95 Mich. 466;

*Cit. St. Ry. Co. v. Com. Council*, 125 Mich. 694;

*Exchange Bank v. Himes*, 3 Ohio St., 1;

*San Mateo Co. v. So. Pac. R. R. Co.*, 13 Fed. 722;

*State v. Smith*, 63 N. E. 214—Dissenting opinion;

*Santa Clara Co. v. So. Pac. R. R. Co.*, 18 Fed. 385;

*State v. Duluth Gas & Water Co.*, 78 N. W. (Minn.) 1032;

*Jacksonville v. McConnel*, 12 Ill. 138;

*People's Loan, etc. Association v. Keith*, 153 Ill. 609;

*People v. Worthington*, 21 Ill. 171;

*People v. McCreery*, 34 Cal. 432;

*People v. Gerke*, 35 Cal. 677;

*People v. Blk. Diamond Coal Co.*, 37 Cal. 54;

*People v. Whortenby*, 38 Cal. 461.

*Contra*,

*State v. Smith*, 63 N. E. (Ind.) 25; 64 N. E. (Ind.) 18, Rehearing ;

*State v. Moffett*, 67 N. W. (Minn.) 68; 64 Minn. 292;

*Fayette Co. v. Bank*, 10 L. R. A. 196;

*Florer v. Sheridan*, 137 Ind. 28;

*Central Pac. R. R. Co. v. Board of Equalization*, 60

Cal. 35.

## II.

**A.** *The objection that the rate is dependent upon the action of local assessing officers within whose jurisdiction complainant has no property, before whom it has no right to be heard and against whose acts, if illegal, it has no redress, is based upon a false premise.* *Argument p. 146.*

(1.) It proceeds upon the theory that the local officers fix and determine the rate, which is not the fact. The rate is, in fact, fixed by the legislature in carrying into effect the constitutional provision. The local officers do no act which affects directly the rate to be applied to complainant. The rate varies from year to year, with the varying of the average tax rate throughout the state, and when the tax rate in the several municipalities has become a fact of record, this rate is averaged and the result applied in the assessment of the property of complainant and similar companies.

(2.) The legislature by statute, and the people by constitutional provision, have the right to impose any tax rate they see fit. The rate imposed, the reasons for its imposition, and the basis of its measurement, are all matters of policy which do not concern the courts and which are within the exclusive jurisdiction of the legislature and the people.

*Argument p. 149.*

*Spencer v. Merchant*, 125 U. S., 345;

*McCulloch v. Maryland*, 4 Wheaton, (17 U. S.) 316, 428;

*Providence Bank v. Billings*, 4 Peters, (29 U. S.) 563;

*Wharton v. School District*, 42 Penn. St. 358;

*Cooley on Taxation*, (2nd Ed.), 343;

*Guthrie on the Fourteenth Amendment*, 95 et seq.

The validity of the tax can, in no way, be dependent upon the mode the state may see fit to adopt in fixing the amount for any year. *Argument p. 151.*

Home Life Insurance Co. v. New York, 134 U. S. 594, 600;

Maine v. Grand Trunk, 142 U. S. 217, 228, 229;

Wisconsin & Michigan Ry. Co. v. Powers, 191 U. S. 387;

Snyder v. Bettman, 190 U. S. 254;

Plummer v. Coler, 178 U. S., 115, 127, 134;

Cumberland & Pennsylvania R. R. Co. v. State, 92 Maryland 668, 690;

Commissioner of Railroads v. Wabash R. R. Co., 126 Mich. 115;

Legal Tender Cases, 12 Wall. (79 U. S.) 561;

State v. Terre Haute, 130 Ind. 443;

Society for Savings v. Ciote, 73 U. S. 594, 608;

State v. Haworth, 122 Ind. 466, 467.

(3.) Complainant is not without right to appear before the local reviewing board and be heard upon questions affecting its interests. *Argument p. 153.*

*Michigan C. L.* 1897, §§ 3852, 3853.

The authority of a property owner to object upon review to irregularity of assessments, is not limited to those of his own property. *Argument p. 154.*

Avery v. East Saginaw, 44 Mich. 590;

Dundee Mort. Trust & Invest. Co. v. Charlton, 32 Fed. 192, 194;

State v. Dodge Co., 20 Neb. 600;

St. Louis Bridge Co. v. People, 128 Ill. 428;

Detroit Common Council v. Detroit Board of Assessors, 91 Mich. 88.

The appearance to correct assessments of the general prop-



erty, is not required to be before the local officers, but might be before the tax commissioners, who have supervision of all the tax rolls of the state. *Argument p. 154.*

*Act 154 of 1899, §§ 152, 153.*

**B.** *The average rate system is not invalid as compelling payment of taxes by complainant based on expenditures of local governments, whose benefits it does not share, while other property owners pay taxes based on expenditures of municipalities in which their property is located.*

*Argument p. 156.*

The plenary authority of the legislature to use any basis of measurement it sees fit, in fixing the tax rate, is controlling here. Further:

(1.) The railroad corporations are taxed for a different purpose than property generally. The tax imposed is a distinct and particular state tax. *Argument p. 156.*

*Pingree v. Auditor General, 120 Mich. 102.*

(2.) Only a certain amount each year is required to maintain the state and its municipalities. The portion of this burden paid by one class, is not borne by another and the average rate system operates to equalize the burden among the classes. *Argument p. 156.*

(3.) The complainant and all other railroad companies benefit particularly from disbursements made in the local municipalities for municipal improvements and their tax rate is very properly proportioned to that borne in the local municipalities, As: *Argument p. 157.*

(a) The disbursement is a tax and the purpose is a public purpose, though it may apparently be confined to the municipality imposing the tax.

*Argument p. 157.*

(b) The prosperity of railroad corporations and the continuance and increase of their traffic, depend on the prosperity of the state's municipalities and the advantages afforded by them.

*Argument p. 157.*

(c) The railroad corporation is not limited in its business to the municipalities through which it runs, but draws its business from all over the state.

*Argument p. 158.*

(d) The very elements of improvement in the local municipalities, to which complainant objects, afford greater pecuniary advantage to railroad corporations, including those having no property in the municipality, than to individuals residing there.

*Argument p. 158.*

(e) By act 173, the state is for the purposes of its operation, created a distinct municipality and the boundaries between the different municipalities become unimportant and do not affect the question.

*Argument p. 158.*

(f) The problem, presented in the adoption of this system, was what would be a fair and equitable rate for all the railroads in the state, taking into consideration the many municipalities in which they exist, and the discrepancy in rate, resulting if each were taxed according to the rate of the municipalities in which it had property, and not what rate one road in a particular part of the state should bear.

*Argument p. 159.*

(4.) The fact that the burdens of taxation as compared with the benefits, are unequally shared, does not invalidate the taxes. If property receives any benefit, from a disbursement, however small, it can be made to share equally in the

taxation, and this, though its property is not in the municipality making the disbursement for which the tax is levied, and though some other property has been more directly benefited.

*Argument p. 159.*

Foster v. Pryor, 189 U. S. 325, 331;

Wagoner v. Evans, 170 U. S. 592;

Thomas v. Gay, 169 U. S. 264;

Kelly v. Pittsburgh, 104 U. S. 78.

(5.) The state has determined that the railroad corporations receive protection and benefits from its laws equal in amount to the expenditures and taxes of the several municipalities for state, county, township, school and municipal purposes and equal to that received by other property throughout the state. This is conclusive upon this court.

*Argument p. 161.*

French v. Barber Asphalt Paving Co., 181 U. S. 341, 344;

Parsons v. District of Columbia, 170 U. S. 45;

Chadwick v. Kelly, 187 U. S. 544.

C. *The complainant is not denied the right of hearing on the rate of taxation, which is accorded to others.*

The function of the board of assessors in determining the tax rate, was purely ministerial, for the purpose of reducing to a certainty the rate fixed in the constitution and statutes.

*Argument p. 162.*

Board of Education v. State Board of Assessors, 133 Mich. 116.

(1, 2.) In the performance of ministerial functions, there is no necessity for hearing, as a hearing could not affect the result. That result must, in all instances, be the same, where the method pointed out by the statute is carried out.

*Argument p. 162.*

Hagar v. Reclamation District, 111 U. S. 708, 709;  
 Emery v. Koekuk, 72 Iowa 704.  
 Gillette v. Denver, 21 Fed. 824;  
 Reclamation District v. Phillips, 108 Cal. 314;  
 Hoge v. Muscatine County, 196 U. S. 280.

(3.) The Legislature designated the class and the rate of taxation it shall bear; there is no apportionment among the members of the class and no opportunity of hearing upon the rate is required to be given; full hearing has been accorded upon the assessments. *Argument p. 164.*

Spencer v. Merchant, 125 U. S. 353, 354;  
 Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 174;  
 Walston v. Nevin, 128 U. S. 582;  
 Paulsen v. Portland, 149 U. S. 39, 40;  
 Nottage v. Portland, 35 Ore. 553, 554;  
 Guthrie on the 14th Amendment, 96.

(4.) If the state board of assessors, in reaching the rate, pursues a wrong method or assumes an excess of authority, the property owner affected by such erroneous procurement of the rate is entitled to redress his or its grievances in the courts. This satisfies all constitutional requirements. *Argument p. 165.*

McMillen v. Anderson, 95 U. S., 37;  
 Glidden v. Harrington, 189 U. S., 259, 260.

**D. Act 173 is not invalid because of any inequality of rate.**

(1.) The system, under act 173, is capable of subjecting both classes to equality of taxation as fully as any that could be devised. Inequality, resulting from a system reasonably designed to secure equality, is without redress.

*Argument p. 166.*

Travelers' Life Ins. Co. v. Connecticut 185 U. S., 364, 371;

Tappan v. Merchants' Nat'l Bank, 19 Wall. (86 U. S.), 490, 504;

State Railroad Tax Cases, 92 U. S., 575, 612;

Merchants' & Manufacturers Nat'l. Bank v. Pennsylvania 167 U. S., 461;

Atchison T. & S. F. R. R. v. Matthews, 174 U. S., 96.

(2.) Separate classification of railroad companies and their property is essential to secure equality among those corporations. If they were taxed at the rates of the local municipalities in which they possess property, the rate of taxation paid by railroad corporations owning property of identical character and put to the same use would be widely different and variations would exist as follows:

*Argument p. 168.*

St. Clair Tunnel, \$12.82.

Michigan Air Line, \$12.54.

Chicago, Milwaukee & St. Paul, \$13.95.

Duluth, South Shore & Atlantic, \$14.79.

Sault Ste. Marie Bridge, \$25.89.

Lake Superior & Ishpeming, \$26.55.

Minneapolis, St. Paul & Sault ste Marie, \$28.55.

Chicago & North Western, \$25.26.

*(Further comparisons may be made by reference to the table in Record, page 476. (Post page 169.)*

(3.) If act 173 makes a valid classification in selecting the railroad and other property subject thereto, for the purpose of applying to it a different rule of taxation than is applied to other property, there is no requirement that it impose the same rate on the property of both classes.

*Argument p. 171.*

- Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283;
- Clark v. Titusville, 184 U. S. 329;
  - Bell's Gap, etc. R. R. Co. v. Pennsylvania, 134 U. S. 232;
  - Home Life Insurance Co. v. New York, 134 U. S. 594;
  - Pacific Express Co. v. Seibert, 142 U. S. 339, 351;
  - Brannon on the Fourteenth Amendment, pp. 340, 352;
  - Guthrie on the Fourteenth Amendment, pp. 128, 130, 131.

(4.) If, in the administration of the law, any inequality results, that defect of administration does not invalidate the act itself; it is only where officers charged with the administration of the law are moved by corrupt motives, that courts give relief from illegal assessments. *Argument p. 172.*

- Cummings v. National Bank, 101 U. S. 153, 161;
- Central Railroad Co. v. State Board of Assessors, 48 N. J. L., 1, 7;
- Dundee Mortgage & Investment Co. v. School Dist., 21 Fed. 151, 155, 156;
- Wagoner v. Loomis, 37 Ohio St. 571, 578, 580;
- Taylor, etc. v. Louisville & N. R. Co., 88 Fed. 350;
- City of Muskegon v. Boyce, 123 Mich. 535.

**E.** *The neglect to provide for equalization of the assessments of the property taxed under act 173, in the manner in which given to other property, does not violate the fourteenth amendment.* *Argument p. 173.*

(2.) The system under act 173 is designed to secure equality of burden; all property is assessed at its cash value and

the average rate imposed upon the general property is then imposed upon that assessed under act 173. *Argument p. 173.*

(3.) The classification made by act 173 is proper and the difference in the rule of equalization applied to different classes is no greater than applied and sustained in many cases. *Argument p. 174.*

State Railroad Tax Cases, 92 U. S. 575;  
 Columbus, etc., R. R. Co. v. Wright, 151 U. S. 470;  
 Pitts. C. C. & St. R. R. Co. v. Backus, 154 U. S. 421;  
 Kentucky Railroad Tax Cases, 115 U. S. 321;  
 Florida v. Reynolds, 183 U. S. 480;  
 Chamberlain v. Walter, 60 Fed. 788;  
 Louisville & N. R. Co. v. Louisville, 29 S. W. (Ky.)  
 865;  
 Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;  
 Northern Pac. R. Co. v. Barnes, 2 N. D. 310, 395-397;  
 McHenry v. Alford, 168 U. S. 651;  
 Central Iowa Railroad Co. v. Supervisors, 67 Iowa  
 199;  
 Pitts. C. C. & St. L. R. R. Co. v. Backus, 154 U. S.  
 421;  
 St. L. etc., R. R. Co. v. Wrothen, 52 Ark. 529;  
 New York v. Barker, 179 U. S. 286;

Where all classes of property are required to be assessed at cash value, it is not necessary that equalization be granted alike to all classes. *Argument p. 175.*

Cummings v. National Bank, 101 U. S., 153, 160, 161;  
 Taylor v. Louisville N. R. Co., 88 Fed. 350, 370;  
 Wagoner v. Loomis, 37 Ohio St. 571.

(4.) The different purposes for which, and methods by which, taxation of the different classes is had, justifies different treatment in regard to equalization.

There is no occasion for equalization of the character ac-

corded in Michigan between property taxed under act 173 and that taxed generally.

The equalization is not for the purpose of affecting values, but to equitably distribute the taxes simultaneously spread. No taxes are spread simultaneously upon the railroad and general property. *Argument p. 177*

(5.) Equalization in Michigan does not deal with under valuation. This condition is corrected by reviews, in which railroad property fully participates. *Argument p. 178.*

(6.) The men constituting the state board of assessors have supervision of all the assessments of the state with the authority to bring them to cash value; this dispenses with all necessity for equalization. *Argument p. 178.*

(7.) Equalization, so far as it affects individual rights and interests, is as fully given to railroads as to other property. *Argument p. 178.*

(8.) Equalization is only a matter of right in cases of fraudulent undervaluation; there the courts furnish it.

*Argument p. 178.*

*F. The statute is not invalid in that the rate is fixed without a legislative determination of the needs in any year of the community receiving the taxes, or of the funds benefitted.*

*Argument p. 179.*

(1.) The fourteenth amendment does not require a legislative determination of the needs of a particular year as a prerequisite to the validity of a tax; nor does the state constitution require it.

(2.) Here the rate is fixed by constitution and statute



which constitute, as far as it is required, a designation of the needs of government. *Argument p. 179.*

(3.) Specific and other taxes which could not, from their nature, constitute a more certain designation of the needs of government than is made in the present case, have always been imposed in Michigan. *Argument p. 180.*

(5.) Taxation of railway companies by the average rate is not novel or confined to Michigan. *Argument p. 182.*

(6.) It is not claimed that the taxes imposed under act 173 exceed the needs of government or of the fund to which devoted. *Argument p. 184.*

(7.) If the objection be of discrimination in violation of the fourteenth amendment, the answer is: *Argument p. 184.*

(a) That this element is as fully taken into account in fixing complainant's taxes as in fixing other taxes.

(b) That there are many instances of, and it has always been the practice in Michigan to subject property to taxation at, continuing rates voted in one year and applicable until repealed.

(c) Railroad property forms a different class, and it would be permissible to apply different rules to it in this respect, than are applied to other property.

(d) If a difference exists, it is one of form and not of substance, and of such character that it might properly be made in the exercise of the right to amend corporate charters.

G. Act 173 does not violate the fourteenth amendment in

that it does not state the tax and its object while all other tax laws are required to distinctly state them.

*Argument p. 186.*

(1.) *It is unnecessary for this act to state the tax or its object as:*

The tax is in reality fixed in the constitution itself.

The constitutional provision, requiring the statement of the tax and its object applies only to taxes recurring annually and those imposed generally upon the entire property of the state.

*Argument p. 187.*

Matter of McPherson, 104 N. Y. 306, 318;

People v. Fire Ass'n. of Phil., 92 N. Y. 311, 327;

Jones v. Chamberlain, 109 N. Y. 100;

Ford's Petition, 6 Lans. (N. Y.) 97;

Guest v. Brooklyn, 8 Hun. (N. Y.) 97.

The requirement that a law imposing a tax shall state its object does not apply where the constitution fixes the object.

*Argument p. 187.*

Walcott v. People, 17 Mich. 68;

Union Trust Co. v. Wayne Probate Judge, 125 Mich. 487;

Pingree v. Auditor General, 120 Mich. 108, 109.—

Opinion, Grant J.

(2.) *The act in question distinctly states the tax and its object.*

*Argument p. 188.*

People v. Mahaney, 13 Mich. 499;

Union Trust Co. v. Wayne Probate Judge, 125 Mich. 494;

Trowbridge v. City of Detroit, 99 Mich. 443;

People v. Supervisors of Orange, 17 N. Y. 238;

Commonwealth v. Brown, (Iverson Brown's Case) 91 Va. 762, 777.

A statement of the fund benefited is a sufficient statement of the object, though the fund be general in nature.

Westinghausen v. People, 44 Mich. 267;  
 People v. Mahaney, 13 Mich. 499;  
 People v. Supervisors of Orange, 17 N. Y. 235;  
 People v. National Fire Ins. Co., 27 Barb. (N. Y.)  
 188;  
 Cooley on Taxation (3rd Ed.) 581.

(3.) *The fourteenth amendment in this regard is not violated as,* *Argument p. 193.*

(a) Act 173 states the tax and its object as fully as it is required to be stated in any tax law.

(b) The corporations taxed under act 173 form a separate class to which separate rules may be applied.

(c) The tax under act 173 is fixed in the constitution which is not true of other taxes.

(d) The New York system, which requires the statement of the tax and its object in some and not in other cases has never been thought a violation of the fourteenth amendment.

Matter of McPherson, 104 N. Y. 306, 318.

**H.** *The application of the same rate to all railroad companies, regardless of the local rate in the territory in which located is not unwarranted.* *Argument p. 194.*

It is more equitable to treat all railroad corporations alike, as a separate class, than to treat them differently, imposing varying rates upon them simply because of a difference in local rates. The question was one of legislative discretion.

## Fifth.

*The constitutional provision and statute do not deprive of property without due process of law. Argument p. 196.*

**I. What due process requires.** As applied to matters of taxation, it has been uniformly held that any system, which gives to the party any means of questioning the validity or amount of the tax at some stage of the proceeding, either before it is determined and fixed, or to contest subsequent proceedings for collection, is due process.

Brannon on Fourteenth Amendment, 349, 350, 351;  
 State Railroad Tax Cases, 92 U. S. 575, 610;  
 McMillen v. Anderson, 95 U. S. 37;  
 Kentucky Railroad Tax Cases, 115 U. S. 321;  
 Winona, etc. v. Minnesota, 159 U. S. 537;  
 Pittsburgh C. C. & St. L. Ry. v. Board of Public Works, 172 U. S. 45;  
 Weyerhaeuser v. Minnesota, 176 U. S. 556, 557;  
 Voigt v. Detroit, 184 U. S. 122;  
 King v. Portland City, 184 U. S. 69, 70;  
 Turpin v. Lemon, 187 U. S. 58;  
 Glidden v. Herrington, 189 U. S. 259, 260;  
 Leigh v. Green, 193 U. S. 88;  
 Cass Farm Company v. Detroit, 181 U. S. 396;  
 French v. Barber Asphalt Paving Co., 181 U. S. 324;  
 Tonawanda v. Lyon, 181 U. S. 389;  
 Detroit v. Parker, 181 U. S. 399.

**II. The statute gives the necessary opportunity for and notice of hearing.** *Argument p. 200.*

The corporations taxed are permitted to make report of the character, description and value of their property and

after assessments based upon such reports, review is had, at which every person or company interested is entitled to be heard; the statute fixing the time and place at which this review shall take place.

**III.** *In response to the specific objections made by complainant,*

**A.** *The guaranty of a republican form of government.*

(1.) The premise assumed by complainant—that its taxes are not imposed by a representative legislature—is erroneous.

*Argument p. 201.*

(2.) The rate is fixed by the constitution and complainant has had full representation. The right of suffrage is not essential to the validity of taxing statutes. *Argument p. 201.*

Cooley on Taxation (3rd ed.), 96;

Thomas v. Gay, 169 U. S. 264, 275;

Wheeler v. Wall, 6 Allen (Mass.) 558;

Smith v. Macon, 20 Ark. 17.

(4.) Act 173 is not objectionable as being taxation without representation:

*Argument p. 202.*

(a) The guaranty, to every state, of a republican form of government, was not a guaranty of any rigidly fixed form of government, but of one similar to that existing in the several states at the time of the adoption of the constitution.

Story on Constitution (5th ed.), § 1841;

Cooley Constitution Limitations (7th ed.), 238;

Minor v. Happersett, 88 U. S. 162, 175.

(b) The guaranty was not intended to guard individual rights and interests but was to the states, as states.

Documentary History, Con. of U. S., pp. 19, 64, 108,  
 123, 370, 371, 322, 456, 651, 652, 732;  
 Cooley Constitutional Limitations (7th ed.), 45;  
 Kadderly v. Portland, 74 Pac. 710, 719;  
 Story on Constitution (5th ed.), § 1815;  
 Tucker on Constitution, p. 638;  
 Texas v. White, 74 U. S. 700, 720, 721.

(c) Questions of whether a government exists or  
 is republican in form are not properly presented to  
 the judiciary. The nature of the thing attempted  
 to be secured, the means, methods and action and  
 judgment for securing it are political in character,  
 to be determined by Congress and not the courts.  
 Luther v. Borden, 7 How. 39, 42, 47, 57;  
 Texas v. White, 74 U. S. 700, 730;  
 White v. Hart, 13 Wall. 649, 652;  
 Tucker on Constitution, p. 637, 638;  
 Story on Constitution (Cooley's note) p. 593, 5th  
 Ed.;  
 Cooley Constitutional Limitations (7th Ed.) pp. 237,  
 238.

**B. (1.)** *No hearing on the rate of taxation is essential*  
 as the rate is fixed in the constitution and by the legislature  
 in the exercise of governmental powers. *Argument* p. 208.

Spencer v. Merchant, 125 U. S. 345;  
 Hagar v. Reclamation District, 111 U. S. 701;  
 French v. Barber Asphalt Paving Co., 181 U. S. 341,  
 344;  
 Williams v. Eggleston, 170 U. S. 311;  
 Parsons v. District of Columbia, 170 U. S. 45-50;  
 Paulsen v. Portland, 149 U. S. 39-40;  
 Judson on Taxation, Sec. 377 et seq., p. 467.

(2.) As the determination of the average rate was ministerial, a hearing thereon could not alter the result and was not required. *Argument p. 211.*

(3.) Complainant has not averred or shown any injury from the application of this method. As a prerequisite to injunction to restrain the collection of taxes, it must make clear that it ought not, in equity, to pay taxes from which it asks relief. *Argument p. 211.*

*Mercantile National Bank v. Hubbard*, 98 Fed. 465, 469;

*Musselman v. Logansport*, 29 Ind. 533;

*Cowell v. Doub*, 12 Cal. 273;

*Anderson v. City of Mayfield*, 93 Ky. 230, 237, 238;

*Streight v. Durham*, 10 Okl. 361, 373; 61 Pac. 1096, 1100;

*Dundy v. Richardson Co. Comrs.*, 8 Neb. 508, 519;

*South Platte Land Co. v. Crete*, 11 Neb. 344, 347;

*Jones v. Summer*, 27 Ind. 511;

*Porter v. R. R. I. & St. L. R. Co.*, 76 Ill. 596;

*Conway v. Younkin*, 28 Iowa 295;

*Warden et al. v. Supervisors*, 14 Wis. 618;

*Miltimore v. Supervisors*, 15 Wis. 10;

See *Cooley on Taxation* (3rd Ed.) 1443 and cases cited.

C. *The tax is not an arbitrary forced contribution.*

*Argument p. 212.*

## Sixth.

## I.

*Interstate commerce is not interfered with.*

*Argument p. 213.*

While the states have no authority to interfere with transportation between the states, to impose any restraint upon the right, privilege, occupation or business of engaging therein or to burden the receipts therefrom, the rule is now placed beyond question, that they have full authority to tax property used in, and instrumentalities of, interstate commerce, regardless of such use, or that the larger portion of the value upon which tax is laid originates in such interstate use.

This right has been sustained as to:

*Railroads:*

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421;

Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439;

Delaware Railroad Tax, 85 U. S. 206, 231, 232.

*Cars:*

Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149;

American Refrigerator Transit Co. v. Hall, 174 U. S. 70; s. c. 24 Col. 300;

Pullman Palace Car Co. v. Pennsylvania, 141 U. S. 19;

Marye v. B. & O. R. R. Co., 127 U. S. 117.

*Bridges:*

Henderson Bridge Co. v. Henderson City, 173 U. S. 592, 623;

Pittsburgh, etc. Ry. Co. v. Board of Public Works, 172 U. S. 32;



Henderson Bridge Company v. Henderson City, 141 U. S. 689.

*Express Companies' Property:*

Adams Express Co. v. Ohio, 165 U. S. 194;

Adams Express Co. v. Ohio, 166 U. S. 185;

Adams Express Co. v. Kentucky, 166 U. S. 171, 180;

Fargo v. Hart, 193 U. S. 490.

*Telegraph Lines and Property:*

Western Union Tel. Co. v. Missouri, 190 U. S. 412;

Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S. 160, 163;

Western Union Tel. Co. v. Taggart, 163 U. S. 1;

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 697;

Western Union Tel. Co. v. Mass., 125 U. S. 590;

Western Union Tel. Co. v. Mass., 141 U. S. 40.

*Steamships:*

Transportation Company v. Wheeling, 99 U. S. 273;

Moran v. New Orleans, 112 U. S. 69.

The rule extends so far as to permit the states, where taxing property engaged in, and instrumentalities of, interstate commerce, to include the intangible value resulting from interstate commerce.

*Argument p. 214.*

Atlantic & Pacific Tel. Co. v. Phil., 190 U. S. 160, 163;

Western Union Tel. Co. v. Missouri, 190 U. S. 412, 422;

Western Union Tel. Co. v. Taggart, 163 U. S. 1;

Henderson Bridge Co. v. Kentucky, 166 U. S. 151;

Adams Express Co. v. Ohio, 166 U. S. 186; s. t. 165 U. S. 194;

Central Pacific R. R. Co. v. California, 162 U. S. 91;

New York L. E. & W. R. R. Co. v. Penn., 158 U. S. 431, 437;

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 698;

Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 446, 447;

Delaware Railroad Tax, 18 Wall. (85 U. S.) 206, 232.

The attitude of this court has been to sustain, if possible, statutes apparently imposing a burden on interstate transportation, or receipts therefrom. Where it has been possible to say that the tax, while not directly imposed on, was on account of, property, the corporation owned and which received protection of the laws, within the state, the court has done so and has sustained taxes where the amount was determined by reference to receipts, capital stock, or other elements.

*Argument p. 216.*

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 696, 697;

New York, L. E. & W. R. R. Co. v. Penn., 158 U. S. 431, 438, 439;

Western Union Tel. Co. v. Mass., 125 U. S. 530, 552;

Pullman Palace Car Co. v. Penn., 141 U. S. 18, 25;

Adams Express Co. v. Ohio, 165 U. S. 220;

Maine v. Grand Trunk Ry. Co., 142 U. S. 217.

See also:

Fairbank v. United States, 181 U. S. 297;

State Tax on Railway Gross Receipts, 15 Wall. (82 U. S.) 284.

## II.

*The mileage basis of apportionment prescribed in the statutes is proper.*

*Argument p. 219.*

A. A railroad system may, for purposes of taxation, be treated and valued as a unit, the whole contributing to the value of every part; and where it extends into several states, the value may be apportionated among the several states, on

a mileage basis. Statutes using this basis of apportionment are in force in many states.

*Adams Express Co. v. Kentucky*, 166 U. S. 171, 180.

To the use of a strict mileage basis there are only two exceptions; it cannot be applied: *Argument p. 220.*

*First*—So as to bring, within the taxing state, property not connected with or a part of the railroad business and which has an actual situs in some other state, nor,

*Second*—Where, by reason of the existence of valuable terminals in one state, which contribute to and greatly enhance the value of the system, its application would be unfair, as bringing within the taxing state a greater proportion of the value than that state would equitably be entitled to.

*Fargo v. Hart*, 193 U. S. 500;

*Pittsburgh C. C. & St. L. Ry. Co. v. Backus*, 154 U. S. 421, 431;

*Western Union Telegraph Company v. Taggart*, 163 U. S. 1, 23;

*Adams Express Company v. Ohio*, 165 U. S. 194-221.

B. The statute does not require apportionment among the states on an absolute mileage basis, but permits apportionment, in accordance with the fact, on the judgment of the board of assessors. *Argument p. 220.*

C. Complainant has in no way overcome the presumption in favor of the validity of the assessment and apportionment made. *Argument p. 221.*

D. The act permits the board of assessors to exercise their discretion in making the apportionment; that discretion,

when once exercised, is absolute and cannot be overcome except in cases of fraud. *Argument p. 223.*

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 436;

Maish v. Arizona, 164 U. S. 611;

McLeod, et al. v. Receiver, 71 Fed. 458;

Adams Express Co. v. Ohio, 165 U. S. 229.

### Seventh.

*The system of taxation, invoked by act 173, as applied to railroad corporations, is a proper exercise of the right to amend corporate charters.* *Argument p. 226.*

(1.) Act 173 of 1901, when passed, became a part of the charters and governing law of Michigan railroad corporations. *Argument p. 226.*

New York & New Eng. R. R. Co.'s Appeal, 62 Conn.

527, 538;

Columbia, etc. R. R. Co. v. Gibbs, 24 S. C. 60, 73;

Alabama & V. Ry. Co. v. Odeneal, 73 Miss. 34;

St. L., I. M. & S. Ry. Co. v. Paul, 64 Ark. 83, 95 Id.,

173 U. S. 404;

Northern Central Ry. Co. v. Maryland, 187 U. S.

258, 268, 269;

State v. Northern Central Ry. Co., 90 Md. 447, 469;

Bangor, Oldtown & Milford R. Co. v. Smith, 47 Me.

34, 48, 49;

Durand v. N. H. & N. Co., 42 Conn. 211, 223;

City of Roxbury v. Boston, etc. R. R. Co., 60 Mass.

432;

St. Albans v. Car Co., 57 Vt. 82;

Tomlinson v. Jessup, 82 U. S. 454, 457;

Leep v. Railway Co., 58 Ark. 407;

Stearns v. Minnesota, 179 U. S. 260, (Dissenting opinion);

Penn. R. R. Co. v. Duncan, 111 Pa. St. 352.

The general railroad law and act 173 of 1901 are *pari materia*, to be read and construed as one enactment.

*Argument p. 232.*

Chicago R. I. & P. Ry. Co. v. Zerneck, 59 Neb. 689, 696;

McHenry v. Brett, 9 N. D. 68, 70;

Dennison v. Allen, 106 Mich. 295;

Shannon v. People, 5 Mich. 36, 50;

Ryan, et al. v. Carter, et al., 93 U. S. 78, 84;

Alexander v. Mayor, 5 Cranch, 7;

Hendrix v. Rieman, 6 Neb. 517, 522;

Black on Interpretation of Laws, p. 204, Sec. 86.

(2.) *The reservation of the right to alter, amend or repeal and its effect generally.* *Argument p. 232.*

These reservations have been before the state supreme court in numerous cases, and that court has been uniform in its decisions to the effect that all acts of incorporation, and rights dependent upon their continued existence, are subject, to this reserved power and, in all particulars to legislative control.

*Argument p. 233.*

Detroit v. Detroit & Howell Plank Road Co., 43 Mich. 140, 147;

Detroit St. Rys. v. Guthard, 51 Mich. 180, 182;

Detroit v. Railway Co., 76 Mich. 421, 426;

Mason v. Perkins, 73 Mich. 303, 318;

Bissell v. Heath, 98 Mich. 472, 478;

Attorney General v. Looker, 111 Mich. 498, 501; affirmed, 179 U. S. 46;

Smith v. Lake Shore & M. S. Ry. Co., 114 Mich. 460, 462.

The Federal cases upholding the right of the state to repeal, alter or amend corporate charters where the right to do so is reserved, sustain the propositions:

*Argument p. 234.*

(a) Where the right to repeal, alter or amend is reserved, the corporate charter and all rights and privileges held thereunder are subject to legislative control, and may be repealed or taken away at the will of that body.

(b) Vested rights, cannot be impaired under such a reserved power, but the power may be exercised and to almost any extent, to carry into effect the original purpose of the grant, to protect the rights of the public and the corporators, or to promote due administration of the affairs of the corporation.

Union Passenger Ry. Co. v. Philadelphia, 101 U. S. 528;

Hoge v. Railway Co., 99 U. S. 348, 351;

Greenwood v. Freight Co., 105 U. S. 13;

Railroad Co. v. Maine, 96 U. S. 499;

Louisville Water Co. v. Clark, 143 U. S. 10, and cases cited;

Sinking Fund Cases, 99 U. S. 700;

Pearsall v. Great Northern Ry., 161 U. S. 663;

Covington v. Kentucky, 173 U. S. 232, and cases cited;

Citizens Savings Bank v. Owensboro, 173 U. S. 636, and cases cited;

Tomlinson v. Jessup, 15 Wall. 454;

United States v. Union Pacific Ry., 160 U. S. 37, and cases cited.

See also:

Miller v. State, 82 U. S. 478, 499;

Holyoke Co. v. Lyman, 82 U. S. 500;

Pennsylvania College Cases, 80 U. S. 190;  
 Spring Valley Water Works v. Schottler, 110 U. S.  
 347;  
 Bienville Water Supply Co. v. Mobile, 186 U. S. 222;  
 St. L. I. M. & S. Ry. Co. v. Paul, 173 U. S. 404;  
 New Jersey v. Yard, 95 U. S. 104;  
 Hamilton Gas Light Co. v. Hamilton City, 146 U. S.  
 271.

(3.) The argument contains an enumeration of amendments made and action taken pursuant to the reserved right.

*Argument p. 236.*

(4.) The authority is not without limit; the exceptions to and limitations upon it have been established to be: that the regulation shall not, be oppressive, unfair or unreasonable (of which it would seem the legislature must judge), deprive the corporation of vested rights or property or interfere with existing contracts, and, in the exercise of the power to amend, shall not essentially impair the object of the incorporation.

These, only, are the limitations established and unless the authority, attempted to be exercised in this instance, falls within them, it follows that the legislature was well within its power in the enactment of the statute in question.

The reservation of this right is not the mere retaining of a right of control, but forms a condition of the contract between state and corporation. That corporate charters create contracts is amply sustained. In cases of the reservation of the right to alter, amend, or repeal, the relation is none the less that of contract; but in, and part of, that contract is the reservation by which the state has secured the right to make and the company has consented to subsequent alterations by the legislature.

Hoge v. Railroad Co., 99 U. S. 353;

Louisville Water Works Co. v. Clark, 143 U. S. 1;  
 Hamilton Gas Light Co. v. Hamilton City, 146 U. S.  
 270.

Being part of the contract, it gives the legislature authority, subject to constitutional limitations protecting property rights and contract obligations, to enact any regulation or restriction which will not impair the purpose of the contract, i. e. the object of the incorporation, and it is not for the corporation to object on the ground that equal protection of the law is denied. It has contracted that the state might alter the existing contract, and having done so it is not open to it to claim that, because regulations, exactions or restrictions are imposed upon or required of it and its property, not required of property owners generally, it is denied equal protection.

*Argument p. 240.*

St. Louis I. M. & St. P. Ry. Co. v. Paul, 173 U. S.  
 408-9;

Leep v. Railway Co., 58 Ark. 407;

Atchison T. & S. F. R. R. v. Matthews, 174 U. S. 104;

Woodson v. State, 69 Ark. 521, 528;

Skinner v. Garnet Gold Mining Co., 96 Fed. 744.

(5.) The validity of the act as applied to railroad corporations is not dependent on its validity as applied to other corporations affected by it.

*Argument p. 242.*

Pittsburgh, etc. R. R. Co. v. Montgomery, 152 Ind.  
 1, 13;

Tullis v. Lake Erie & Western R. Co., 175 U. S. 348,  
 351;

Leep v. Railway Co. 58 Ark., 407, 408; see also 173  
 U. S. 407.



### **Eighth.**

*The system of taxation under act 173 does not violate the state constitution.* *Argument p. 244.*

**A.** *Considerations applying specifically to the uniformity provision.* *Argument p. 244.*

(1.) The purpose of the constitutional amendment was to permit a separate and uniform rule to be applied to the property taxed under act 173. *Argument p. 244.*

(2.) If but one uniform rule were intended, no change in the constitution would have been necessary. *Argument p. 245.*

(3.) The structure of section 11, of article XIV of the constitution, as amended, excepts the property assessed by a state board of assessors from the uniform rule applied to property generally. Ordinarily a proviso is an exception to language preceding it. *Argument p. 245.*

*Minis v. United States, 15 Peters, 445;*

*Carroll v. State, 58 Alabama, 401;*

*Sloat v. McComb, 42 N. J. Law, 484.*

(4.) Had the constitution intended the property taxed under act 173 to be assessed according to the uniform rule applied to property generally, the requirement would have been "*the uniform rule,*" instead of "*a uniform rule.*"

*Argument p. 246.*

(5.) The uniform rule has always permitted exemptions to one class of property not given to another.

*Argument p. 246.*

**B.** *Considerations attaching specially to the requirement of cash value.* *Argument p. 247.*

(1.) A deduction of credits to the amount of debts is not a rule of valuation, but an exemption. *Argument p. 247.*

(2.) If the deduction of debts from credits be held to amount to a rule of valuation, the effect is invalidity of the general law permitting the deduction instead of invalidity of act 173. All property assessed generally is subject to one uniform rule and if a deduction constitutes a rule of valuation, deductions cannot be given to credits, in applying that uniform rule, which are not given to other property.

*Argument p. 247.*

That deduction of debts from credits has always been practiced in Michigan, leads conclusively to the result that permitting the deduction to one and not another class does not apply different rules of valuation or violate the requirement of assessment at cash value.

*Argument p. 248.*

St. Joseph v. St. Joseph National Bank, 46 Mich.

526;

Fayette County Treasurer v. Peoples' Bank, 47 Ohio

State, 503;

Hubbard v. Brush, 61 Ohio State, 252.

(3.) The deduction of credits to the amount of indebtedness is an exemption, rather than a rule of valuation, which is permitted.

*Argument p. 248.*

People v. Auditor General, 7 Mich. 90,

Walcott v. People, 17 Mich. 92;

East Saginaw Salt Mfg. Co. v. E. Saginaw, 19 Mich.

292-3;

National Loan & Investment Co. v. Detroit, 136

Mich. 451; 99 N. W. 380;

Board of Supervisors v. Auditor General, 65 Mich.

411.

(4.) Only property assessed is required to be at cash

value and property may be omitted without violating the cash value rule. *Argument p. 249.*

*C. Considerations applicable to both the uniformity and cash value provisions of the state constitution.*

(1.) The contemporaneous history of the adoption of act 173, conclusively fixes the status and construction in this regard of the constitutional amendments. The Atkinson Bill (Appendix) had just been declared unconstitutional and the amendments were made to admit the passage of such an act as that bill (which made the same provision with regard to credits as does act 173) had been. *Argument p. 249.*

(2.) The constitution and statute are to be so construed as to stand together and both must be so limited or enlarged as to permit the act to stand. *Argument p. 250.*

(3.) The legislature in enacting act 173 has construed the constitution and the state court has accepted this construction as binding upon it. *Argument p. 252.*

(4.) State constitutions are limitations upon, not grants of, power and the limitations will not be extended by construction. *Argument p. 253.*

(5.) Though act 173 does, in not making provision for the deduction of debts from credits, contravene the state constitution, the act is not therefore void, but voidable. *Argument p. 254.*

(6.) The statute must be regarded as valid in any event, unless it appear that complainant possesses credits which should have been deducted and that the deduction was claimed at the proper time. *Argument p. 254.*

(7.) The board of assessors did not include credits in making their assessments. *Argument p. 255.*

## A R G U M E N T .

### FIRST.

**The fourteenth amendment; what it permits and requires in matters of taxation.**

**A. *The power of taxation in general.*** The taxing power of the state is one of its highest attributes of sovereignty and is essential to its continued existence. It is not derived from, but exists in the states independently of, the United States constitution and may be exercised to an unlimited extent, upon all property, trades, business and avocations carried on within the territorial boundaries of the state except so far as it has been surrendered to the Federal government, either expressly or by necessary implication.

Union Pacific R. R. Co. v. Peniston, 18 Wall (85 U. S.), 5, 29, 30;

McCulloch v. State, 4 Wheaton (17 U. S.), 316, 428;

Picard v. East Tenn., etc. R. R. Co., 130 U. S. 641.

The power of taxation is one of the most essential to a state and one of the most extensive in its operation; where it exists it is a right which in its nature recognizes no limit.

Weston v. Charleston, 2 Peters (25 U. S.), 466.

The power of taxation is of vital importance; it resides in the government as part of itself and is essential to its existence, being granted by all for the benefit of all.

Providence Bank v. Billings, 4 Peters (27 U. S.), 351, 353.

**B. *The fourteenth amendment in general.*** This amendment was not designed or intended to limit the taxing powers of the states but for an entirely different purpose, as is indicated by the history of its enactment and the early decisions. It was adopted in 1868; in 1872 it was said to be confined

in operation to the protection of the newly emancipated negro; (*Slaughter House Cases*, 16 Wall (83 U. S.) 36, 81). in 1873 it was said,

"The exercise of the authority which every state possessed to tax its corporations and all their property, real and personal, and their franchises and to graduate the tax upon the corporations according to their business or income or the value of their property, when this is not done by discriminating against rights held in other states, and the tax is not on imports, exports or tonnage, or transportation to other states cannot be regarded as conflicting with any constitutional power of congress." (*Delaware Railroad Tax*, 18 Wall. (85 U. S.), 206, 232.)

In 1877 it was said that, "The Federal Constitution imposes no restraints on the states" in regard to unequal taxation, but its enlargement, to apply generally in matters of police regulation has included tax regulations until it has now become settled that the fourteenth amendment does impose restraints upon the states in regard to taxation, and requires that in its imposition due process and equal protection of the laws shall be observed. The question, therefore, becomes what does due process and equal protection require in matters of taxation.

The amendment as limiting the states in regard to taxation, must be strictly construed and the taxing regulations be construed liberally. This has always been the applied rule, and in view of the fact that the amendment was not adopted for the purpose of limiting the power of the states in this regard, it is a proper one. So uniformly has the rule been applied that there is no decision of this court setting aside the taxing system of a state on the ground of its violation of the fourteenth amendment.

C. *Strong presumptions favor the validity of taxing statutes.* A presumption of constitutionality of course follows all statutes but, for reasons arising from the character and necessity of taxation, it being one of the highest attributes of sovereignty and essential to the continued existence of government, before the power can be said to have been improperly exercised, the violation of the fundamental law must be so palpable as to amount to spoliation under the guise of taxation. The rule has been aptly expressed by this court in *Henderson Bridge Co. v. Henderson City* (173 U. S., 592, 614, 615), where it was said:

"But in order to bring taxation imposed by a state or under its authority within the scope of the Fourteenth Amendment of the National Constitution, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really spoliation under the guise of exerting the power to tax. As an act of Congress should not be declared unconstitutional unless its repugnancy to the supreme law of the land is too clear to admit of dispute, so a local regulation under which taxes are imposed should not be held by the courts of the Union to be inconsistent with the National Constitution, unless that conclusion be unavoidable. All doubt as to the validity of legislative enactments must be resolved, if possible, in favor of the binding force of such enactments."

Similar language is used in *King v. Mullins* (171 U. S. 404, 435, 436) where, in refusing to declare a state taxing statute unconstitutional as violating the fourteenth amendment, it was said:

"The judiciary should be very reluctant to interfere with the taxing systems of a state, and should never do so unless that which the state attempts to do is in pal-

pable violation of the constitutional rights of the owners of property."

See, *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 562, 563;

*San Diego Land & Town Co. v. National City*, 174, U. S. 754;

*Florida Central, etc. R. R. Co. v. Reynolds*, 183 U. S. 479;

*Central Pacific Ry. Co. v. Evans*, 111 Fed. 76.

*D. Classification is permitted.* The complainant's case is principally directed to the impropriety of the classification which the statute makes and to the application of different methods and incidents of taxation, to the different classes. We have, therefore, considered it appropriate to examine the cases upon this question which we think has been settled, at some length.

The fourteenth amendment to the Federal constitution was not designed or intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways, nor intended to compel the states to adopt an iron rule of equality, to prevent the classification of property for purposes of taxation or the imposition of different rates upon different classes; but that amendment permits, classification for purposes of taxation, the application of different rules of assessment, valuation and review to different classes and the imposition of different rates thereon; and it is sufficient that all persons within the same class are treated alike and that there is no discrimination in favor of one as against another of the same class.

*Bell's Gap R. R. Co. v. Pennsylvania*, 134 U. S. 232;

*Giozza v. Tiernan*, 148 U. S. 657, 662;

*Adams Express Co. v. Ohio*, 165 U. S. 228;

*Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 293;

Billings v. Illinois, 188 U. S. 97, 102, 103.

In *Giozza v. Tiernan* (148 U. S. 662), it was said:

"Nor, in respect to taxation was the amendment intended to compel the State to adopt an iron rule of equality; to prevent the classification of property for taxation at different rates; or to prohibit legislation in that regard, special either in the extent to which it operates or the objects sought to be obtained by it."

In *Bell's Gap R. R. Co. v. Pennsylvania*, (134 U. S. 237), the statute subjected all moneyed securities to an annual state tax of three mills on the dollar of actual value, while bonds and other securities issued by corporations were taxed at three mills on the dollar of nominal or par value, which was claimed to constitute discrimination in violation of the fourteenth amendment. The court, upholding the statute, said:

"the law does not make any discrimination in this regard which the State is not competent to make. All corporate securities are subject to the same regulation. The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and gen-



eral usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. \* \* \* We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the States to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt."

In *Magoun v. Illinois Trust & Savings Bank* (170 U. S. 293, 294) the inheritance tax statute of Illinois provided a tax on inheritances, graduated with reference to the degree of relationship and amount of legacy or bequest received; the more remote the relationship and the greater the beneficial interest received, the larger the tax, which varied from one to six dollars on every hundred dollars of value. The court held the legislation constitutional, and emphatically affirmed the doctrine that the fourteenth amendment, permits reasonable classification for purposes of taxation and the imposition of different rates upon the several classes, and, simply requires, the same means and methods to be applied impartially to all the constituents of a class, and that the law operate equally and uniformly upon all persons in similar circumstances. Mr. Justice McKenna, in regard to the rule of the fourteenth amendment, said:

"The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute

of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances, it may not tax A more than B, but if A be of a different trade or profession than B, it may. \* \* \* The State may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion."

*Merchants & M. Nat. Bank v. Pennsylvania*, 167 U. S. 461;

*Kentucky Railroad Tax Cases*, 115 U. S. 321;

*Home Insurance Co. v. New York*, 134 U. S. 594;

*Gulf, etc. Ry. Co. v. Ellis*, 165 U. S. 150;

*Clark v. Titusville*, 184 U. S. 329;

*American Sugar Refining Co. v. Louisiana*, 179 U. S. 89;

*New York v. Barker*, 179 U. S. 279;

*Charlotte, etc. R. R. Co. v. Gibbes*, 142 U. S. 386;

*Travelers' Life Ins. Co. v. Conn.*, 185 U. S. 364;

*Kidd v. Alabama*, 188 U. S. 730;

*Cook v. Marshall County*, 196 U. S. 269;

*Coulter v. Louisville & N. R. Co.*, 196 U. S. 608, 9;

*Feld v. Barber Asphalt Pav. Co.*, 194 U. S. 621, 2.

In *Merchants and M. Nat. Bank v. Pennsylvania* (167 U. S. 461), it was held that a rate of 8 mills on the par value of stock did not unduly discriminate between banks whose stock was at or below par and those whose stock was much above par.

In *Kentucky Railroad Tax Cases* (115 U. S. 321), a different rule and method of taxation and review was held properly applied to railroad real estate than to other real estate. Different rules of valuation were also held properly applied.

In *Home Insurance Co. v. New York* (134 U. S. 594) it was

held that a New York statute selecting corporations for taxation upon their "franchise and business" at a graduated rate, dependent upon the amount of dividends and character of stock, did not contravene the fourteenth amendment as it treated all in similar circumstances alike.

In *Gulf, etc. Ry. Co. v. Ellis* (165 U. S. 150), the text was amply sustained in holding a statute invalid which imposed upon railroads an attorney fee as a penalty for a refusal to pay debts, which was not imposed upon others. The decision was placed upon the ground that as general debtors railroads are not differently situated from other debtors.

In *Clark v. Titusville* (184 U. S. 329), a statute imposing a graduated tax or license fee dependent in amount upon the amount of business transacted was held valid.

In *American Sugar Refining Co. v. Louisiana* (179 U. S. 89), a statute taxing the business of refining sugar and molasses and exempting from its operation "planters and farmers grinding and refining their own sugar," was held to make a reasonable and valid classification.

In *New York v. Barker* (179 U. S. 279), a different rule was applied to the correction of corporate assessments than to individual assessments, and was held valid.

In *Charlotte, etc. R. R. Co. v. Gibbes* (142 U. S. 386), a statute classifying railroad companies by themselves and imposing upon them the entire expense of a state railroad commission, was held valid.

In *Travellers' Life Insurance Co. v. Connecticut* (185 U. S. 364), it was held proper to apply a different rate to stock in insurance companies held by non-residents than where held by residents and to make deductions of the value of land owned by the corporation in one but not in the other case where the taxes imposed on the stock held by residents were for local purposes and on that held by the non-residents for state purposes.

In *Kidd v. Alabama* (188 U. S. 730), different rules of taxation were permitted of stock held in the state, of foreign corporations not doing business in the state and that of domestic corporations and those foreign corporations doing business in the state.

In *Cook v. Marshall County* (196 U. S. 269), it was held proper to apply a system in the taxation of retailers not applied in case of wholesalers.

In *Coulter v. Louisville & Nashville Ry. Co.* (196 U. S. 608, 609), it was held proper to apply a different rate to franchises of corporations than to tangible property.

**E. Limitations upon the power of classification.** The power of classification under the amendment, both in making general police regulations and in taxation, is not without limit. The governing rule in general is stated by Mr. Justice Brewer in *Gulf, etc. Ry. Co. v. Ellis* (165 U. S. 155), to be that,

"Classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made without any such basis."

In *Connolly v. Union Sewer Pipe Co.* (184 U. S. 559), it was said:

"The guaranty of the equal protection of the laws means that no persons or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances."

*Missouri v. Lewis*, 101 U. S. 22;

*Barbier v. Connolly*, 113 U. S. 27;

*Duncan v. Missouri*, 152 U. S. 337, 382.

In *Giozza v. Tiernan* (148 U. S. 662), it is stated:

"It is enough that there is no discrimination in favor of one as against another of the same class. Bell's Gap

*Railroad v. Pennsylvania*, 134 U. S. 232; *Home Insurance Co. v. New York*, 134 U. S. 594; *Pacific Express Co. v. Seibert*, 142 U. S. 339. And due process of law within the meaning of the amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

F. *Comparison of the power of classification as applied to taxation, with the power as applied in police and other regulations.* It must be emphasized that this statute is one of taxation; that different considerations move the courts in determining the validity of statutes making classifications for taxation purposes and those making classifications for other purposes, such as police regulations; that the decisions which are conclusive upon the question of classification for police regulations are not necessarily applicable in matters of taxation; that in matters of taxation, the application given to the amendment by the courts is consistent with a very wide discretion in the legislatures of the states; that taxation systems must clearly violate the amendment to meet the disapproval of the courts; that where there is any difference in the classes to which different rules and incidents are applied, which bears any relation to the purpose of the classification made, the courts will not inquire into the necessity or propriety of the classification, but will leave those subjects to the legislative discretion. These rules have always been at least tacitly recognized by this court, and in certain recent cases have found affirmative and emphatic support. The distinction between taxing and other statutes, and the degree of finality to be accorded to the legislative judgment in the former instance, are expressly recognized in *Connolly v. Union Sewer Pipe Co.* (184 U. S. 562, 563), where the anti-trust law of Illinois was declared unconstitutional as denying equal protection of the laws by reason of discrimination in exempting from its provisions, agricul-

turalists and live stock dealers or raisers. There those contending for the constitutionality of the law cited similar cases. [*American Sugar Refining Co. v. Louisiana*, (179 U. S. 89); *Mayoun v. Illinois Trust & Savings Bank* (179 U. S. 283).] of classification for purposes of taxation and insisted that the same rules should be applied to the case before the court.

The court distinguished the cases on the ground that the previous cases related to taxation; and of *American Sugar Refining Co. v. Louisiana*; said

"We said in that case: 'The power of taxation under this provision was fully considered in *Bell's Gap Railroad Company v. Pennsylvania*, 134 U. S. 232, in which it was said not to have been intended to prevent a State from changing its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property altogether; may impose different specific taxes upon different trades or professions; may vary the rates of excise upon various products; may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness. All such regulations, and those of like character, so long as they proceed within reasonable limits and *general usage*, are within the discretion of the state legislature or the people of the state in framing their constitution.' \* \* \* The decision now rendered is not at all in conflict with the views expressed in the two cases just cited. It is sufficient to say that those cases had reference to the taxing power of the State, and involved considerations that could not, in the nature of things, apply to a state enactment like the one involved in the present case. The power to tax persons and property is an incident of sovereignty, and the extent to which it may be exerted has been indi-

cated in numerous cases. Taxing laws, it has been well said, furnish the measure of every man's duty in support of the public burdens and the means of enforcing it. A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a state could not tax any property or calling unless, at the same time, it taxed all property or all callings. Its discretion in such matters is very great and should be exercised solely with reference to the general welfare as involved in the necessity of taxation for the support of the State. A State may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the constitution of the United States. But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class, if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade, to do the same things with impunity. It is one thing to exert the power of taxation so as to meet the expenses of government and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the state, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the

operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates." (184 U. S. 562, 563.)

*Billings v. Illinois*, 188 U. S. 102.

*Cook v. Marshall County*, 196 U. S. 274.

The case of *Billings v. Illinois* (188 U. S. 102), is strongly illustrative of the principle that in matters of taxation the legislative judgment, of the necessity of classification and in the selection of the persons property or institutions to form the classes, is to govern where there is any basis for it whatever. There the Illinois inheritance tax statute was before this court. If there could be a case of obnoxious classification because of inequality, where any difference existed between the constituents of the different classes, it was found in that statute. A life tenant with a remainder to a lineal descendant was taxed; a life tenant with a remainder to a collateral heir was not taxed. It is true that there was a slight difference in the constituents of the separate classes (taking their interest and estate as influenced by the relationship, of their successors to the property, to the person deceased), but it was not a difference which in any way affected the value or use or character of the estate taxed to the party taxed, or his interest therein in that respect, and the amount, character and value of enjoyment was identical in the two classes as also the estate which each class took, and yet the classification was held proper and the rule of *Connolly v. Union Sewer Pipe Co.* (184 U. S. 562, 563) was affirmed.

The case of *Cook v. Marshall County* *supra*, furnishes a very recent expression on the subject. There it was said of the effect of cases passing upon the validity of police regulations,



"These cases, however, have but limited application to laws imposing taxes where the right of classification is held to permit of discrimination between different trades and callings when not obviously exercised in a spirit of prejudice or favoritism. \* \* \* This distinction was recognized by Mr. Justice Harlan in *Connolly v. Union Sewer Pipe Co.* \* \* \* It can scarcely be doubted that if the *Connolly* Case had dealt with the subject of taxation, a discriminative tax upon the producers of agricultural products, either greater or less than that imposed on other manufacturers or producers might have been held valid without denying to either party the equal protection of the laws." (196 U. S. 274.)

**SECOND.**

**The classification made by act 173 is based upon such reasonable differences of property, situation, circumstance, or use, as to satisfy the requirements of the fourteenth amendment.**

A. We will consider the question from the standpoint of the classification as applied to railroad corporations as complainant in the present case is a corporation organized under the railway laws and doing a general railroad business. The act in question has selected for the purposes of its operation the property of the corporations therein enumerated, (railroad, union station and depot, express, car-loaning, stock car, refrigerator car and fast freight-line companies), to the exclusion of the property of other persons and corporations

It, therefore, remains to be considered whether the situation and condition of the corporations enumerated and their property, are sufficiently different, from other corporations and individuals and their property, to justify the application, to their property, of a separate and distinct rule of taxation from that applied to such other property. We attempt to show that classification applying a separate rule of taxation to the corporations selected by act 173, is valid, based on material and inherent differences in the nature and character of the corporations taxed and their property and its use, and complies with the requirement, of equal protection of the laws, of the fourteenth amendment.

In this instance, each corporation selected in forming the separate class is what may be termed "a public service corporation" which, taken in connection with the nature of the property of these corporations, scattered through the several municipalities of the state, possessing peculiar rights and enhanced in value by franchises, seems sufficient, in itself, to justify the classification.

That the fourteenth amendment, as applied to railroad corporations, permits separate classification of those corporations and their property, for purposes of taxation, must be regarded as placed at rest by the Federal cases, and the laws of the several states have uniformly provided separate and distinct systems and rules of taxation for railroad property, which have been generally sustained:

State Railroad Tax Cases, 92 U. S. 575;

Kentucky Railroad Tax Cases, 115 U. S. 321 (81 Ky. 492, 512);

Columbus Sn. Ry. Co. v. Wright, 151 U. S. 470,—  
s. c. 89 Ga. 574;

Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;

Pittsburgh, C. C. & St. L. Ry. Co. v. Backus, 154  
U. S. 421,—s. c. 133 Ind. 625;

Northern Pacific R. R. Co. v. Barnes, 2 N. D. 310,  
395, 396, 397;

McHenry v. Alford, 168 U. S. 651, 665, 673;

Florida, etc. R. R. Co. v. Reynolds, 183 U. S. 480;

Missouri River, etc. R. R. Co. v. Morris, 7 Kan. 210;

State Board of Assessors v. Central R. R. Co., 48  
N. J. L. 146, 278, 280, 290, 300, 313;

Central Iowa Ry. Co. v. Board of Supervisors, 67  
Iowa 199;

City of Dubuque v. C. D. & M. R. R. Co., 47 Iowa  
200;

Owensboro & N. Ry. Co. v. Davies County, 3 S. W.  
(Ky.) 164;

Ames v. People, 56 Pac. (Col.) 656;

Yazoo & M. V. R. Co. v. Adams, 25 So. 355;

Louisville & N. R. Co. v. City of L., 29 S. W. (Ky.)  
865;

St. Louis, etc. Ry. Co. v. Worthen, 52 Ark. 529;

Chamberlain v. Walter, 60 Fed. 788;

Sawyer v. Dooley, 21 Nev. 390, 398;

State v. Severence, 55 Mo. 378;

Elliott on Railroads, § 740 and cases cited;

Guthrie on the 14th amendment, p. 113, and cases cited;

Cooley on Taxation (3rd ed.) 72 et seq.

In the *State Railroad Tax Cases* (92 U. S. 611, 612), a statute of Illinois made provision for the assessment of the property of railroad companies by a system different from that governing the taxation of other property. By this system, the property (except that local in character) including right of way, rolling stock and *franchises*, was assessed as a unit, and apportioned among the several municipalities, according to the length of the road within their limits, which levied their taxes thereon; this was claimed to violate the provision of the state constitution requiring uniformity of taxation, and the fourteenth amendment to the Federal constitution. The statute and classification made by it were held valid, the court saying:

"There can be no doubt that all the classes named in this clause, including peddlers, showmen, innkeepers, ferries, express, insurance, and telegraph companies, are taken out of the general rule of uniformity prescribed by the first clause, and the only limitation as to them is that of uniformity as to the class upon which the law shall operate; that is, innkeepers may be taxed by one, ferries by another, railroads by another, provided that the rule as to innkeepers be uniform as to all innkeepers, the rule as to ferries uniform as to all ferries, and the rule as to railroad companies be uniform as to all railroad companies. As we have seen no evidence that the rule by which railroad property is taxed is not uniform in its action on all the railroad companies of Illinois, we can perceive no opposition to the constitution of the State in that rule.

But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best." (92 U. S. 611, 612.)

In speaking of the alleged violation of the Federal constitution, it was said:

"The validity of the statute is not seriously questioned here on the ground of any conflict with the Constitution of the United States. If any such claim be set up, it is sufficient to say it is without foundation." (92 U. S. 617, 618.)

This question was next presented to this court in the *Kentucky Railroad Tax Cases* (115 U. S. 336, 337). There, the statute of Kentucky provided a separate system, different in material respects from the system for the assessment and taxation of property of corporations generally, for the assessment and taxation of the property of railroad companies by a state board, upon which assessment the same rate of tax for state purposes was imposed as that imposed upon other real estate in the state; one of the differences between this system and that applied to corporations generally was that, in case of other corporations the statement in their reports of the value of their property was conclusive upon the auditor, while in cases of railroad corporations, the values given by the corporations were subject to review and correction. In addition, the property of the railroad company was apportioned among the several counties and other municipalities through which its line of road extended, and the same rate of taxation imposed thereon for local purposes as was imposed upon real estate therein. This system was objected to as unconstitutional, as denying equal protection of the law, in that one

system was provided for railroads and another for other real estate. The statute and classification made by it were held valid, the court saying:

"The discrimination against railroad companies and their property, which is the subject of complaint as being unjust and unconstitutional, arises from the fact that, in the legislation of Kentucky, on the subject, railroad property, though called real estate, is classed by itself as distinct from other real estate, such as farms and city lots, and subjected to different means and methods for ascertaining its value for purposes of taxation, and differing as well from those applied to the property of corporations chartered for other purposes, such as bridge, mining, street railway, manufacturing, gas and water companies. These latter report to the auditor the total cash value of their property, and pay into the treasury, as a tax, upon each one hundred dollars of its value, a sum equal to the tax collected upon the same value of real estate; and their reports and valuations are treated as complete and perfect assessments, not subject to revision by any board or court, and conclusive upon the taxing officers.

But there is nothing in the Constitution of Kentucky that requires taxes to be levied by a uniform method, upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. *There is no objection, therefore, to the*

*discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the Legislature has seen fit to impose.*" (115 U. S. 336, 337.)

"We have already decided that the mode of valuing railroad property for taxation under this statute is due process of law. That being so, the provision securing the equal protection of the laws does not require, in any case, an appeal, although it may be allowed in respect to other persons, differently situated." (338.)

In *Columbus Southern Ry. Co. v. Wright* (152 U. S. 470), a statute of Georgia, similar to those considered in the two cases last referred to, was before the court and held not to violate the fourteenth amendment, by providing for the assessment and taxation of railroad property by a rule different from that applied to property of corporations and individuals generally, the court there said of the classification mode:

"This is hardly an open question. Various modes of taxing railroad property are adopted by the different states. In some, railroad companies are taxed upon their property as a unit. In others, the road and property in each county are separately assessed, and in still other states, the whole road is assessed, and then the assessment apportioned among the several counties and towns. These and all similar modes of taxation are subject to the legislative discretion of the respective states and do not ordinarily present any Federal question whatever." (151 U. S. 478.)

In *Pittsburgh, C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 421), a statute of Indiana, similar in effect, was held constitutional and valid, and of it the court said:

"Its constitutionality has been practically settled by decisions of this court." (154 U. S. 425.)

In *Florida Central, etc. R. R. Co. v. Reynolds* (183 U. S. 480), a statute of Florida selected, for the purpose of reassessment, the property of railroad companies which had escaped taxation, without at the same time providing for the collection of unpaid taxes on other property; this was objected to as discriminatory, in violation of the fourteenth amendment. The court, after reviewing at length the cases construing and determining the nature of the application of the fourteenth amendment, as applied to matters of taxation, held the act valid, saying:

"If the State had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to overthrow its action. The mere fact that such legislation may operate with harshness is not of itself sufficient to justify the court in declaring it unconstitutional. These matters of classification are of state policy, to be determined by the State, and the Federal government is not charged with the duty of supervising its action." (183 U. S. 480.)

In *Charlotte, etc. R. R. So. v. Gibbes* (142 U. S. 386), an act requiring railroads alone to pay the salaries of special tax commissioners by a tax on their gross income, was held not to be a denial of the equal protection of the laws.

In *Northern Pacific R. R. Co. v. Barnes* (2 N. D. 310), the taxation of railroads by percentage on their gross earnings, when other property was assessed upon actual cash value, was held not a denial of the equal protection of the laws.

In *McHenry v. Alford* (168 U. S. 651, 655, 673), a specific tax on gross earnings in full of all taxes on the land and other property of railroads, was held not to deprive other owners of similar lands, taxed upon their value, of equal protection of the laws.



In *Missouri River, etc. R. R. Co. v. Morris* (7 Kan. 219), an assessment of the entire line of a railroad as a whole and an apportionment to counties, townships, etc. by officers other than the regular assessors, was held not unconstitutional.

In *State Board of Assessors v. Central R. R. Co.* (48 N. J. L. 146, 278, 280, 290, 300, 313), it was held that railroad property may be made subject to separate rules of taxation through a state board of assessors without contravening the fourteenth amendment.

In *Central Iowa R. R. Co. v. Board of Supervisors* (67 Iowa 199), a provision for an annual specific tax on railroads instead of a regular biennial ad valorem tax as imposed upon all other property, was held not to deny equal protection.

In *City of Dubuque v. C. D. & M. R. R. Co.* (47 Iowa 200), a system of railroad taxation, incidentally discriminating against towns where shops, depots, etc. are located, was held not in conflict with constitutional provision that all corporate property "shall be subject to taxation the same as that of individuals."

In *Owensboro & N. Ry. Co. v. Davies Co.* (3 S. W. (Ky.) 164), it was held that where railroad property, though called "real estate," is valued and assessed differently from farms, city lots or other corporate property, the equal protection of the laws is not denied.

In *Ames v. People* (56 Pac. 656, 26 Col. 83), separate classification of railroad property for taxation purposes by assessing same as a unit and apportioning to counties, etc., according to miles of track therein, was held not in conflict with the constitutional provisions.

In *Yazoo & M. V. R. Co. v. Adams* (26 So. 335; 76 Miss. 545), appointment of special railroad commissioner to collect back taxes, and with no authority to assess other property, and a failure to provide for the usual appeal, was held not a denial of the equal protection of the laws.

In *Louisville & N. R. Co. v. City of L.* (29 S. W. (Ky.) 865), a discount of 3% for payment of taxes before specified time, applicable to citizens, not railroad, was held neither discriminatory nor unconstitutional.

In *St. Louis, etc. Ry. Co. v. Worthen*, (52 Ark. 529) the taxation of railroads by special commission, and providing for an annual assessment of "railway tracks" when other real estate is assessed biennially, and the denying of the usual appeal from such assessment, was held not a withholding of the equal protection of the law.

In *Chamberlain v. Walter* (60 Fed. 788), the annual valuation of railroad property for taxation purposes, where the constitution directs an assessment upon all other property only once in every fifth year, was held not a denial of equal protection.

**A.** *The right of the state to separately classify railroad property for purposes of taxation appears so conclusively settled as a general proposition, by the cases referred to, that it seems unnecessary to point out details distinguishing this from other property. We will, however, mention a few of the many special features.*

(1.) Railroad corporations possess franchises of a character peculiar to themselves and different from those possessed by other corporations. These are granted, or permitted to exist, by the state, and their enjoyment is of itself a sufficient difference upon which to base classification for taxation purposes. A number of these peculiar franchises are:

(a) The right of eminent domain is exercised generally in acquiring property for use in their business. This right is of one of the state's sovereign powers, and its exercise is of essential advantage to the corporation. When the state confers this privilege on a corporation or class of corporations, it

can subjoin to its enjoyment such limitations as it chooses, and among those limitations would properly be a special and separate system of taxation of the corporations possessing the privilege.

(b) This class of corporations are by Constitution permitted to have, and by statute given, perpetual existence. This admits of perpetual succession and an accumulation of intangible value not possible to corporations having a temporary existence.

(c) This class of corporations is given the use of a large amount of public property, e. g., they are, in addition to the right to take the property of private individuals, permitted to make use of any street, highway or alley which in the construction of their line they find occasion to cross or use. (*C. L.* 1897, § 6234.)

(d) The right of succession to the franchises and privileges of existing railroad corporations is permitted to purchasing corporations. (§ 6224, *C. L.* 1897.) This increases the franchise value and permits the corporation to secure its creditors to advantage.

(e) They are given the power to *enforce* connection with other similar companies.

(f) The statute expressly recognizes the sale value of the franchises and provides for their transfer. (*C. L.* 1897, §§ 6328, 6331, 6333, 6339, 6341.)

(2.) The railroad corporation possesses in large degree intangible value different from that attaching to property owned by individuals and different from that possessed by other corporations in that it is affected by the difference in the character of the franchises conferred upon the respective corporations. This intangible value, of course, is due to present

earning capacity, as well as the possibility for future earnings evidenced and secured by franchises conferred upon and permitted to exist by the state, and is different from that possessed by other corporations in important particulars.

(a) It exists in railroad companies in a more permanent character than in other corporations, due to the reasons, among others,—that it is not so readily diffused by competitive forces as the railroad traffic is not exposed to the competition evidenced in other business, and that corporations of this character are permitted perpetual existence. (*Record 497.*)

(b) The business of railroad corporations is in a sense monopolistic; between local points upon its line it has an absolute monopoly. (*Record 497.*)

(c) Railways are peculiarly benefited by the growth of territory. In the absence of commercial or competitive forces which tend in the great majority of businesses to diffuse the advantage of increase in population or wealth, railways are able to advantage themselves as the direct result of the growth of the community. (*Record 497.*)

(d) In railway business, economies are made possible by increased density of traffic. The fundamental law of transportation making railroads different from other classes of business, is that increased density of traffic results in increased rate of profit. (*Record 497.*)

(3.) The railroad corporation is engaged in rendering a service to the public in which the state itself might engage, (so far as the limitations of the fourteenth amendment are concerned). If the state itself engaged in this service it might attach such limitations as it chose, and if it organizes quasi-public corporations and permits them to take its place

in doing this business, the corporations should at least be subject to a peculiar control by the state different from that which the state exercises over corporations engaged in private businesses, and this right would extend to the imposition of a peculiar system of taxation. In other words, the rule broadly stated, might be that in permitting the quasi-public corporation to carry on its business, the state may make any regulation which it might make if it carried on the business itself, except that vested property rights are not to be infringed.

Upon this question the language of Mr. Justice Brewer, in *Cotting v. Goddard* (183 U. S. 93, 94), in speaking of the right of the state to control and regulate rates of public service corporations, is of interest and illustrates the difference between corporations of this character and private corporations. He says:

"Now, in the light of these decisions and facts, it is insisted that the same rule as to the limit of judicial interference must apply in cases in which a public service is distinctly intended and rendered, and in those in which, without any intent of public service, the owners have placed their property in such a position that the public has an interest in its use. Obviously there is a difference in the conditions of these cases. In the one, the owner has intentionally devoted his property to the discharge of a public service. In the other, he has placed his property in such a position that, willingly or unwillingly, the public has acquired an interest in its use. In the one he deliberately undertakes to do that which is a proper work for the state. In the other, in pursuit of merely private gain, he has placed his property in such a position that the public has become interested in its use. In the one, it may be said that he voluntarily accepts all the conditions of public service which attach to like service per-

formed by the state itself. In the other, that he submits to only those necessary interferences and regulations which the public interests require. In the one, he expresses his willingness to do the work of the state, aware that the state in discharge of its public duties is not guided solely by a question of profit. It may rightfully determine that the particular service is of such importance to the public that it may be conducted at a pecuniary loss, having in view a larger general interest. At any rate, it does not perform its services with the single idea of profit. Its thought is the general public welfare. If in such a case an individual is willing to undertake the work of the state, may it not be urged that he in a measure subjects himself to the same rules of action, and that if the body which expresses the judgment of the state, believes that the particular services should be rendered without profit, he is not at liberty to complain? While we have said again and again that one volunteering to do such services cannot be compelled to expose his property to confiscation, that he cannot be compelled to submit its use to such rates as do not pay the expenses of the work and therefore create a constantly increasing debt which ultimately works its appropriation, still is there not force in the suggestion that as the state may do the work without profit, if he voluntarily undertakes to act for the state, he must submit to a like determination as to the paramount interests of the public?

Again, wherever a purely public use is contemplated, the state may and generally does, bestow upon the party intending such use, some of its governmental powers. It grants the right of eminent domain by which property can be taken, and taken, not at the price fixed by the owner, but at the market value. It thus enables

him to exercise the powers of the state, and exercising those powers and doing the work of the state, is it wholly unfair to rule that he must submit to the same conditions which the state may place upon its own exercise of the same powers and the doing of the same work?" (183 U. S. 93, 94.)

(4.) Unlike the property of individuals and other corporations, which is situated in a single assessment district, or if in more than a single assessment district, in detached parcels not depending upon each other for the success of the general business or upon the amount of profit, that of the railroad company is made up of a continuous, connected and inseparable line of property extending into numerous municipalities of the state and possibly into several states. Each portion of the system contributes to the success and profit of the whole, one portion being dependent for its value and earning power upon the remainder. The value existing in excess of the cost of reproduction of the physical property can only be reached and determined by taking a corporation and its property as a whole.

Adams Express Co. v. Ohio, 166 U. S. 219;

S. V. R. R. Co. v. Supervisors, 78 Virginia 279.

To attempt to assess so much of the property separately in each of the municipalities as lies within such municipality, would destroy for purposes of taxation and prevent the taxation of, anything but the physical property. This necessities a system like the present by which the property of the company can be assessed as a unit.

See Briefs in California v. Pacific R. R. Co. 127 U. S. 1;

City of Dubuque v. C. D. & M. Ry. Co., 47 Ia. 202;

State Board of Assessors v. Central Railroad Company, 48 N. J. L. 322.

The rule is stated in *Rorer on Railroads* (p. 1499, § 14), as follows:

"A railroad is an entirety and cannot be cut up and taxed and sold for taxes in parcels. Such a course would not only sacrifice the structure for a nominal price, as it could not in parcels be of its real value to a purchaser, but would result in a destruction of the franchise and would destroy its availability to the public."

(5.) The railroad corporation as a quasi-public service institution, has received public aid in a large degree. Of this I think the courts will take judicial notice and this fact alone would permit separate classification.

(6.) Perpetual existence is given to railroad corporations by the Michigan Constitution, but is denied to all other corporations, except canal and plan road companies. (*Constitution*, § 10, *Art. XV.*)

(7.) These corporations have undertaken to permit legislation with regard to them. In the law of their organization, as well as in the Constitution, the right to alter, amend or repeal is reserved. This is an essential item and one which justifies their separate classification but does not justify a direct attack on vested property rights. Acts of incorporation have in numerous cases been held contracts, and it has been held that corporations organizing under a statute, take it with the burdens and restrictions therein set forth. They cannot claim the advantages and shirk the disadvantages, but in becoming corporations under a statute reserving the right to alter, amend or repeal, they agree with the state that it may make any and all reasonable regulations of their property or business, or apply to them different and peculiar rules, whether of taxation or otherwise, so long as the regulations applied do not materially impair the purposes of organization or take away property rights which have



been acquired. The state can take away the very existence of the corporation, and if it can do this, it certainly can subject it to a different system of taxation, which does not burden it more oppressively than the other property of the state is burdened, and, which has for its real purpose compelling it to bear its just proportion of the expenses of the state's government. This idea is sustained by *St. Louis I. M. & S. Ry. Co. v. Paul* (173 U. S. 408, 409), and will be found argued at length in another portion of this brief. (*Post page 226.*)

(8.) The idea of taxing railroad property by a rule distinct from that by which other property is taxed is not new in Michigan. In fact, since the creation of the state, and previous to the adoption of the fourteenth amendment, railroad and other public service corporations have, in this state, been taxed according to a different rule and method than that applied to the property of individuals and corporations generally; these corporations have always been taxed at a certain rate per cent upon their gross earnings, or some other form of specific taxation, which has been in lieu of other taxes on the property engaged in the railroad business.

*General Laws:*

- C. L. 1857, § 952; C. L. 1871, § 1143;
- Howell's § 1218; C. L. 1897, § 3992;
- 1855, act 82, § 45, p. 173;
- 1869, act 142, § 45, p. 262;
- 1873, act 198, § 1, art. 2, p. 530;
- 1875, act 195, § 37, p. 354;

*Special Acts:*

- 1846, act 42, § 33, p. 61;
- 1846, act 104, § 20, p. 151;
- 1846, act 137, § 22, p. 234;
- 1846, act 154, § 21, p. 282;
- 1846, act 158, § 2, p. 289;

1855, act 138, § 3, p. 302;

1855, act 140, § 9, p. 305.

The specific system of taxation, in selecting for its application the property of railroad and similar corporations, has been uniformly sustained.

The Delaware Railroad Tax, 18 Wall. 206, 231;

McHenry v. Alford, 168 U. S. 651;

Pacific R. R. Co. v. Barnes, 2 N. D. 310, 395.

If railroad and other similar corporations are a separate class for the imposition of a tax at a specified rate upon their gross earnings, they are equally a class by themselves for the purpose of taxation on the property engaged in carrying on their business. The limitations which would prevent classification for the one would equally prevent it for the other purpose.

That the state has always pursued a system for the taxation of railroad and other public service corporations according to a separate rule has great force in determining the propriety of the classification, as it was not intended by the 14th amendment to limit the authority of the states in regard to taxation, and such requirements as are "within reasonable limits and *general usage* are within the discretion of the legislature."

American Sugar Refining Co. v. Louisiana, 179 U. S.

94;

Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232.

Magoun v. Illinois Trust & Savings Bank, 170 U. S.

294;

(9.) The rates of railroad companies are regulated by the state, the constitution early making express provision for it. (*Art. XIXA, § 1.*)

This is one of the few if not the only case of the regulation of rates by the state and the fact that the state has regulated those rates (and that its right has been sustained generally),

gives it the authority to impose upon these corporations a separate system of taxation. The fact of rate regulation was one of the reasons for partial exemption from taxation previous to 1901. A direct and necessary relation exists between the rates for performing the service and the tax, as the income permitted bears a direct relation to the amount of taxation, and the fact that the state is permitted to separately classify these corporations for rate regulation carries with it authority to also separately classify for purposes of distinct systems of taxation.

*B. In addition to the differences between the railroad corporation and other corporations pointed out above, there are certain things surrounding the classification made which completely justifies the legislature in making that classification.*

(1.) In the bill of complaint there is and in the lower court, there was no claim whatever that anything, further than the property of the railroad companies engaged in their railroad business, was included in the assessment, or that the railroad companies possessed any personal property further than that engaged in such business.

(2.) The aim of the present statute is not to make a classification solely upon the basis of a difference in the character of the corporations taxed by the different systems; the classification is not predicated on the fact that the corporations taxed by act 173 are of a different character than those corporations taxed locally, but predicated principally on the fact that the property of the corporations subjected to taxation is of a different character, in a different situation and subject to different circumstances, conditions and surroundings than is property belonging to persons and corpo-

rations generally, and the aim of the statute in the case of railroad corporations is to tax that property used in carrying on the *railroad* business.

Indicative of this is the description which the state board of assessors is required to enter upon its roll in assessing railway property, which is:

"Real estate, rolling stock, right-of-way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a state board of assessors." (§ 9, act 173, 1901.)

Section 5 of the act provides:

"The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, road-bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property, and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property."

This construed by the rule that general words following special words are to be confined to things *ejusdem generis* is limited to *railroad* property.

American Transportation Company v. Moore, 5

Mich. 368; 24 How. 1;

McDade v. People, 29 Mich. 50;

Brooks v. Cook, 44 Mich. 617.

The system of taxation under act 173 was intended to include only the property of railroad companies previously subjected to specific taxation (see record, pp. 357 to 372 inclusive), not that which had paid its fair share of the state

taxes through local assessments and the previous specific system had embraced only the property engaged in railroad business. (*C. L.* 1897, § 6277, 3830, *clause* 8th, § 11, *act* 235 of 1903.)

In addition, act 173 expressly excludes from its operation the real property of the railroads not presently used by them in carrying on their railroad business, indicating clearly the legislative intent. (§ 5, act 173, 1901.) It is thus seen that the statute contemplates a classification of the property by reason of the different use to which it is put, situation in which it is found and conditions which surround it, from the property of corporations and individuals generally. That this is proper basis for classification is beyond question.

In *Northern Pacific R. R. Co. v. Walker*, (47 Fed. 685, 686), it was said:

"The legislature, in the exercise of its powers to select the subjects of taxation and classify property for taxation, 'may place railroads in a class by themselves, and tax them and their property different from other persons; the only limitation being that all railroads in the same class must be taxed alike.' But, as before stated, conceding that under the organic act railroads may be classed by themselves for the purposes of taxation, and taxed by a method applicable to them alone, still that classification and method of taxation must be restricted to what is railroad property. It cannot be extended to lands which have no relation to the railroad, or its use or operation. The franchises of railroad companies, and their earnings, and railroad property as before defined, may well be classed by themselves for purposes of taxation, and taxed by a different method or rule from that applied to other property. This may be done because it is unlike other property. It is the difference in the character, condition and use of this kind of prop-

erty from other property that justifies the difference in classification and the mode of taxation. Property of the same kind, in the same condition, and used for the same purpose, must be taxed by a uniform rule without regard to its ownership."

In the last mentioned case, it was held that lands owned by a railroad corporation, not used in the operation of its road could not be treated as railroad property, and were not differently situated than lands owned by private individuals. In this respect, the decision was overruled by *McHenry v. Alford* (168 U. S. 668, 669), which held that an act providing for the specific taxation of property of railroad companies, (including in the property thus taxed lands separate from, and not used directly in carrying on the railroad business, the same being mortgaged to secure the payment of bonds, issued to raise money used in the construction of the road,) was valid and constitutional, and that the classification of those lands with the other property of the railroad company to be taxed by a system, and at a rate, different from that to which the lands of individuals were subject, was valid. This decision was placed upon the basis that the security of the lands made it possible to build the road, and as such, they contributed to the gross earnings upon which the tax was paid, and constituted a part of the railroad property as fully as the right of way, road bed, tracks or engines, the court saying:

"There is no difference in principle between the two classes of property, so far as this question is concerned. Then too, the road of the company runs through the whole state, hundreds of miles; it owns thousands upon thousands of acres therein, granted it for the purposes stated, and these lands it has accordingly pledged to redeem its bonds issued as mentioned. Its building was a work of national importance, and it was built for use by the government, as well as for other purposes. Surely

all these various facts justify a classification of such an entity for taxation by a different method and upon different lines than the individual, and the lands thus situated and owned are in a materially different condition from lands absolutely owned by an individual."

*Stearns v. Minnesota*, 179 U. S. 223.

There has been no claim or showing on the part of the complainants, either in their pleadings or proofs, that act 173 intended to include or that there was actually included by the state board of assessors in making their assessments, anything but railroad property, meaning property engaged in carrying on the railroad business; nor is there any proof to indicate that it owns any property not engaged in its railroad business; this being true, the court will not assume the inclusion of any such property by the state board of assessors, the presumption being to the contrary. These corporations are organized for a single and distinct purpose—that of operating railroads, they are not investment companies; it is doubtful if, without express statutory authority, they could, in this state, own property which would not be subject to classification as railroad property, and if they do own any such property, it was the intent of section 5 of act 173 to exclude it from the operation of the statute. If any property other than railroad property was included or is owned by them, it is their business to disclose it. (*Adams Express Co. v. Ohio*, 166 U. S. 223.)

The remark is made in numerous cases previously referred to, and the principle is settled that the state may "impose different specific taxes upon different trades or professions; may vary the rates of excise upon various products, may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness. (134 U. S. 232.) If it is permissi-

ble to impose different rates upon, and tax by different systems, persons engaged in different trades or professions, the same principle will permit the taxation, at different specified rates and according to different systems, of property engaged in different kinds of business.

The rule is that the states are allowed a large discretion in classification for the purposes of taxation; if a classification rests upon some difference in the character of the property which bears any proper and just relation to the purpose for which the classification is made, the courts will not inquire into the good faith of the legislature or whether any further reason exists for the classification. This being the rule, it must necessarily follow, as the cases have amply sustained, that there is a sufficient difference between the situation of property engaged in railroad business and that engaged in other business and owned by individuals and other corporations, to permit the application of different rules of assessment and taxation.

(3.) In making railroad property a separate class, the constitution and statute do not make it a separate class for the imposition of the same tax as is imposed on general property. The railroad property is made to bear certain state expenses, the tax being particularly a state tax. (Act 173, 1901, § 16.) (120 Mich. 102.) The other property of the state is made to bear state and local taxes different in character than those imposed upon the railroad corporation. This of itself is a complete justification of separate systems of valuation and review and has been so held by this court.

In *Travelers' Life Ins. Co. v. Connecticut* (185 U. S. 364), a different tax upon stock in the same corporation owned by residents, from that owned by non-residents, was upheld for the reason that the tax upon one class was for state, and the other for municipal purposes. The court pointed out that the



non-resident stock by reason of its character, was very properly selected for the purpose of bearing the state tax. In this case, by reason of the character of the railroad property and its location in a number of municipalities, its business in each contributing to its value as a whole, the railroad corporation was very properly selected for the purposes of the state tax.

C. Numerous statutes, limited in their operation to railroad corporations, have been sustained,—

*Minneapolis, etc. Ry. Co. v. Herrick*, 127 U. S. 210;

*Tullis v. Lake Erie & Western R. R. Co.*, 175 U. S. 348;

*Missouri Pacific Ry. Co. v. Humes*, 115 U. S. 512;

*Louisville & N. Ry. Co. v. Tenn. Ry. Com.*, 19 Fed. 679.

See, also, *Commonwealth v. Sharon Coal Co.*, 164 Penn. St. 284, (304);

*New York v. Barker*, 179 U. S. 279.

In *Minneapolis, etc. Ry. Co. v. Herrick*, and *Tullis v. Lake Erie & Western R. R. Co.*, statutes providing for liability for injuries resulting from negligence or incompetence of fellow servants, was limited to railroad corporations.

In *Missouri Pacific Ry. Co. v. Humes*, the statute provided for the erection of fences and for failure imposed double damages for stock killed, and was limited to corporations.

D. Railway companies have always been regarded as special subjects of classification for purposes other than that of taxation, notwithstanding the more stringent rule of classification for such other purposes.

*Minneapolis, etc. Ry. v. Beckwith*, 129 U. S. 26;

*Missouri Pacific Ry. v. Mackey*, 127 U. S. 205;

Minneapolis, etc. Ry. v. Herrick, 127 U. S. 210;  
 Atchison T. & S. F. Ry. v. Matthews, 174 U. S. 96;  
 St. Louis, etc. Ry. v. Paul, 173 U. S. 404;  
 Chicago, B. & Q. Ry. v. Chicago, 166 U. S. 258;  
 McCandless v. Richmond & D. R., 18 L. R. A. 440;  
 Schoolcraft, Admr. v. Louisville N. R. Co., 92 Ky. 233;  
 Georgia R. R. & Banking Co. v. Miller, 90 Ga., 571;  
 Minneapolis, etc. Ry. Co. v. Emmons, 149 U. S. 364;  
 New York & N. E. R. R. Co. v. Bristol, 151 U. S. 556;  
 Clark v. Russell, 97 Fed. 906,—C. Ct. A.;  
 Gulf, etc. R. R. Co. v. Ellis, 165 U. S. 150;  
 Missouri, Kansas & Texas Ry. v. May, 194 U. S. 269;  
 Central Pacific Ry. v. Evans, 111 Fed. 76.

In *Missouri Pacific R. R. v. Mackey* (127 U. S. 205), railroads were separately classified for purposes of a statute, imposing liability for injury resulting from negligence or incompetency of fellow servants; and the statute in

*Minneapolis & etc., Ry. v. Beckwith* (129 U. S. 26), was of the same character.

In *Atchison T. & S. F. Ry. v. Matthews* (174 U. S. 96), the statute permitted recovery of attorney fee against railroads upon successful action for damages for fire resulting from operation of road, while such attorney fee was not allowed as against plaintiffs or other corporations.

In *St. Louis, etc. Ry. Co. v. Paul* (173 U. S. 404), the statute provided penalty for failure of railroad corporations to pay employees upon termination of employment by continuing wages at same rate, and applied only to railroad companies.

In *Chicago, B. & Q. Ry. Co. v. Chicago* (166 U. S. 258), the railroad company was awarded nominal compensation for the laying out of a street across its road, while individual property owners were given the value of the land which was taken.

In *Georgia R. R. & Banking Co. v. Miller* (90 Ga. 571), it was held that a rule of liability imposed upon railroad com-

panies for injury to employees by negligence or misconduct of fellow servants not applied to other classes of employers was not unconstitutional.

In *Missouri, Kansas & Texas Ry. v. May* (194 U. S. 269), of a law subjecting railroad companies to a penalty for allowing certain grasses and noxious weeds to go to seed, but not applying to other property owners—it was said:

“When a state legislature has declared that in its opinion a certain policy is necessary, its action should not be disturbed by the courts under the fourteenth amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force, its extension to others whom it leaves untouched.”

E. The following propositions must be regarded as conclusively settled by the Federal cases:

(1.) Different rates, and rules of valuation, assessment and review can properly be applied to the separate classes and the property of railroad and other public service corporations as one of the separate classes.

(2.) Other and different rules of classification are proper and can be applied by the legislature of a state in enacting a taxing system than can be used in classification for other purposes.

(3.) A classification of property based on the nature of use is legitimate and proper.

(4.) Railroad corporations and their property may be made a special class for purposes of taxation.

## THIRD.

Should property, of specific companies, or of specific character, have been classed with that of complainant to render the statute constitutional.

A. *Sleeping car companies.* With regard to these companies the bill alleges, and the answer (*Record 42, 12*) denies, "that there were in the state of Michigan at the time of the passage of said act number 173, and ever since have been sleeping cars owned and used by railroad corporations in the course of their railroad business and consequently within the terms of said act number 173, while during all said time there have been sleeping cars owned and used in the state of Michigan by corporations and associations other than railroad corporations in the same way and for the same purposes and in the same sort of business as sleeping cars owned and used by railroad corporations as aforesaid, but the property of such sleeping car companies other than railroad corporations is not within the terms of said act."

Testimony (*Record 174, 181, 252*) was taken to indicate the character of sleeping car as compared with railroad companies and to indicate the extent to which sleeping cars are owned and operated by railroad companies. From this testimony the character of the sleeping car business carried on by the Pullman company, appears to be that that company owns sleeping, chair and dining cars which it furnishes by contract to the railroad company, which usually pays a rental charge. The cars are placed in the railroad company's trains, which furnishes the motive power, takes care of the outside of the car and running gear and collects the fare for transportation. The Pullman company furnishes the car with a porter and charges an occupancy fare, in addition to the fare charged by the railroad company.

The following elements are possessed by and surround railroad, but not sleeping car, companies:

(a) They own and necessarily use real estate, right-of-way, road-bed, stations and many similar things in operation.

(b) They are given the right of eminent domain and other rights and privileges not given to sleeping car companies.

(c) They do a miscellaneous business and receive revenue from freight and other sources—the sleeping car company's business and earnings are limited.

(d) Their fares are regulated by the state.

(e) They own and use locomotives and furnish motive power and superintendence of trains.

(f) They make contracts, and charge fare, for the carriage of passengers—the sleeping car company only charges an occupancy fare.

(g) They are subject to the Michigan railroad law and its police regulations.

(h) They are common carriers, which the sleeping car company is not.

Pullman Palace Car Co. v. Hatch, (70 S. W. 771), 30 Tex. Civ. App. 303.

Scaling v. Pullman Palace Car Co., 24 Mo. App. 32;

Blum v. Southern Palace Car Co., Fed. Cases, 1574;

Pullman Palace Car Co. v. Gaylord, 9 Ky. Law Rep. 58.

If the railroad company operates sleeping cars, it is merely as an incident of its principal business of a common carrier, while the business as performed by the Pullman company is its principal business.

The business of the Pullman company is simply the renting of cars at special contract rates and collecting an occupancy charge. It has nothing to do with the operation, and is dependent for a continuation of its business in its present form on the existence of the railroad company; while the railroad company is not in like manner dependent on the sleeping car company for a continuance of its business.

The Witness Patriarche states that the business done by railway companies is similar to that done by the Pullman company. This may be true, so far as that limited part of the railway's business is concerned, but it does not mean that the railway company is in the sleeping car business, or the sleeping car company in the railway business.

The business of these sleeping car companies is of such a nature as to justify the legislature in classifying them with railroad companies, with property generally, or by themselves.

In *Western Union Telegraph Company v. Indiana* (165 U. S. 304), it was held that the Indiana statute classifying telegraph, telephone, palace-car, sleeping car, express and fast freight companies together for the purposes of taxation by a different rule than applied to railroad and other companies, was not unconstitutional.

The question, however, is controlled by *Pacific Express Co. v. Seibert* (142 U. S. 354). There, the property and business of the express companies before the court was in a position identical with regard to its relation to the property and business of the railroad companies as is the property of the sleeping car companies under the testimony in this case. The railroad companies carried an express business but those express companies which operated by contract with the railroad companies and which did not own their own means of transportation were not taxed as the railroad companies were taxed, and here the sleeping cars which are not operated by

railroad companies are not taxed according to the same rule. The court distinguishes the classes made by pointing out that the railroad company doing express business employed a large amount of property which was taxed while those express companies doing business under contract with railroad and steamboat companies were not taxed upon the same amount of property engaged in the express business. In comparing the railroad with the express company, it was said:

"They do not do business under the same conditions or under similar circumstances. In the nature of things and irrespective of the definitive legislation in question, they belong to different classes. There can be no objection, therefore, to the discrimination made as between express companies defined by this act and other companies or persons incidentally doing a similar business by different means and methods in the manner in which they are taxed. Their different nature and character and means of doing business justify the discrimination in this respect which the legislature has seen fit to impose." (142 U. S. 354.)

Pacific Express Company v. Seibert, 44 Fed. 310, 316;

Pullman Southern Car Co. v. Gaines, 3 Tenn. Chancery, 587;

Robbins v. Taxing District, 81 Tenn. 309;

Gibson County v. Pullman Southern Car Co., 42 Fed. 574;

Contra:

Car Company v. Texas, 64 Texas 274.

As was said in the last mentioned case (*Pacific Express Company v. Seibert*), a system

"which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity

and equality in taxation and of a just adaptation of the property to its burdens,"

but to sustain the contention of the complainant in this regard would render it imperative to tax all property by the same system and would lead to the result that their lands must be taxed as other lands are taxed, their personal property taxed as other personal property is taxed, their stations as other buildings, etc. The very statement of the proposition carries with it the answer.

The business of an institution or its property is to be classified for taxation with reference to its entire business rather than by a comparison with some business or property which is engaged, in part in, or, in part of, the same business.

American Sugar Refining Co. v. Louisiana, 179 U. S. 95;

Cook v. Marshall County, 196 U. S. 274, 275.

The record indicates that the operation of sleeping cars by railroad companies is very limited; that they are operated by but a very few companies and are simply a part of, and incident to, their railroad business. Though the business of the Pullman company were identical with this business, the discrimination would be so slight that it should be overlooked.

Mercantile Bank v. New York, 121 U. S. 161, 162;

Florida, etc. R. R. v. Reynolds, 183 U. S. 480.

In the case last above, it was said:

"We must assume that the legislature acts according to its best judgment for the best interests of the state. A wrong can not be imputed to it. It may have found that the railroad delinquent tax was large and the delinquent tax on other property was small and not worth the trouble of special provision therefor."

The Michigan legislature of 1905 (by act 282) amended act 173 so as to include within its terms sleeping car companies so that this question is now immaterial to the statute's validity.



**B. Interurban street railway companies.** Complainant's contention is that street railway companies have interurban railways running in and between different places, carrying mail, express, freight and passengers, and are doing business and own property of essentially the same sort and character as that of the corporations included in act 173 and that discrimination results from such corporations not being classed with complainant.

The differences of situation between the properties of these companies and complainant appear from the testimony of Patriarche and Walker. (*Record* 170, 444.) Some of the principal points of difference are as follows:

(a) The business of the interurban street railway is of recent origin, there being little interurban mileage in Michigan previous to 1902. (*Record* 178.) This is particularly so with regard to freight business.

(b) Rates of fares on interurban roads are uniformly less than on steam roads.

(c) The interurban franchise is acquired from the municipalities in which operated; these municipalities by law are permitted to regulate by contract the rate of charge, running time and speed.

(d) The steam roads' rates are regulated by the statute, and

(e) It has and exercises the right of eminent domain.

(f) Steam roads are organized for perpetual existence, street railways for thirty years. (*Constitution*, § 10 Art. XV.)

(g) Steam roads interchange passengers among each other, but not so with interurban roads.

(h) The interurban business is principally local, as against car interchange on steam roads.

(i) The length of haul is radically different, being invariably shorter on interurban roads.

(j) The interurban road carries practically no freight in car-load lots.

(k) The makeup of the train is different.

(l) The interurban road uses the streets, particularly in cities and villages.

(m) The steam road is an additional burden to the highway, the street railroad is not.

(n) The interurban road has little or no interstate traffic, operates no sleeping cars, maintains few, if any stations, has no right under statutes to force interchange connection or switches with steam road.

These are sufficient differences to justify separate classification of property engaged in this business from that engaged in railroad business proper. The interurban road may be in competition with the steam road and may carry passengers, or a limited amount of the same kind of freight, but the similarity in the business of the two institutions does not render imperative their classification together for purposes of taxation, if elements of difference exist between them. Almost any one of the items referred to constitutes in itself a sufficient difference to justify separate classification.

These roads have always been subjected to separate rules of taxation from railroad property, and have been classified with and assessed and taxed as is property throughout the state generally. The purpose of act 173 is to subject to ad valorem taxes those corporations theretofore paying specific taxes. The street railway corporations had not been paying specific taxes; no reason existed for their inclusion in the act, and there can be no claim that the burden is not equally distributed between the interurban and steam railroad companies; the one pays the rate of taxation in the municipality

in which its property is located, the other the average rate. That these institutions were, previous to 1902, taxed according to different systems, now justifies a different classification for taxation purposes.

Railroad Company v. Harris, 99 Tenn. 706, 707;

Kidd v. Alabama, 188 U. S. 732.

In *Erb v. Morasch* (177 U. S. 584), an ordinance limiting the rate of speed of railroads, excepted from its provisions a certain interurban street railroad operated at the time of its passage by steam power used in dummy engines and subsequently by electricity. This was held not an arbitrary classification, the court saying:

"All that is necessary to uphold the ordinance is that there is a difference, \* \* \* Given the fact of a difference, it is a part of the legislative power to determine what difference there shall be in the prescribed regulations." (587.)

Savannah T. & I. Ry. Co. v. Mayor, 198 U. S. 392.

In *Kentucky Railroad Tax Cases* (115 U. S. 337), it was said that a classification which distinguished between street railway and railroad corporations was valid and based upon reasonable differences.

See also, *Jersey City v. B. Ry. Co.*, 65 N. J. L. 501;

*Camden & A. R. Co. v. Atlantic City*, 58 N. J. L.

316—affirmed 41 Atl. 1116;

*Lookout Incline & L. E. R. R. v. King*, 59 S. W. 805;

*Cedar Rapids & M. C. Ry. v. City of C. R.*, 106 Iowa 476.

Questions of whether, in the construction of particular statutes, street railroads are included within the term "railroads" are considered in many cases which indicate that it has never been considered essential to classify the two together, and that they are in fact different in character.

*Mass. Loan & Trust Co. v. Hamilton*, 11 Am. & Eng.

*R. R. Cases* (N. S.) 771, 88 Federal, 588;

Fidelity Loan & Trust Co. v. Douglas, 9 Am. & Eng. R. R. Cases (N. S.) 713, 716, 717; 104 Iowa, 536.  
 Cordray v. Savannah, etc. Ry., 30 Am. & Eng. R. R. Cases (N. S.) 286;  
 Savannah, etc. Ry. Co. v. Williams, 30 Am. & Eng. R. R. Cases (N. S.) 279;  
 State v. Duluth Gas & Water Company, 76 Minn. 76;  
 Riley v. Galveston City Ry. Co., 13 Texas Civ. App. 247;  
 Louisville & P. R. R. Co. v. Louisville City Ry. Co., 2 Duv. (Ky.) 175;  
 Front St. Cable Co. v. Johnson, 47 Am. & Eng. R. R. Cases (N. S.) 287.

The ultimate result of the complainant's contention on this point is that steam and street railways must be taxed together and alike. The interurban in certain respects is similar not only to the steam but also to the street railroad and the considerations which might be pointed out as requiring its classification with the steam railroad also require its classification with the street railway. It is not for the courts to determine, but it must be left with the legislature to say with which class the interurban shall be taxed.

C. *Railroads owned and operated by individuals, partnerships or unincorporated associations.*<sup>1</sup> No evidence has been introduced to indicate the character of the property owned, or business done, by these purported railroads, except in three instances,—The F. & F. Lumber Company road,<sup>2</sup> the Louis Sands Lumber Company road,<sup>3</sup> and the Cadillac & Northeastern or Cummer-Diggins road.<sup>4</sup>

---

NOTE—<sup>1</sup> The testimony on this question is found in Record pages 200, 224, 384, 399, 401, 417. <sup>2</sup> Permanent main line 12 miles, temporary, 10 miles. Record, 419. <sup>3</sup> Main line 25 miles. Record, 225. <sup>4</sup> Main line 10 miles, branches 15. Record, 386.

(1.) With regard to the three roads in reference to which testimony was introduced, the proof indicates that they are, what may be designated, "logging roads." The several owners are individuals or partnerships engaged principally in the business of lumbering, and incidentally and for the sole and only purpose of conveying their forest products from the forest to the mill, operate short railroads, which will be discontinued when the lumber in the locality is cut off; in instances they carry forest products for others, but only upon a special contract with each individual.

In each instance the roads are located in unsettled portions of the country, with one end in the woods and the other at the mill, and it would be impossible, taking into consideration the surrounding conditions and location, to carry on a general railroad business as it is carried on by complainant, or by railroad corporations generally, there being no such business to be carried. In each instance they have no running time schedule or fixed rates of fare or charge, and often months elapse without trains being run; each owns several locomotives and a number of logging flats, but no passenger cars and they carry no passengers, (the F. & F. road did establish a passenger tariff for the express purpose of preventing persons from riding on their trains) baggage, mails or express. The roads are built entirely upon private rights of way, purchased by the owners; they do not conform to the requirements of the general railroad laws, can not exercise the right of eminent domain, are not common carriers, and do not possess any of the privileges accorded to railroad companies. The entire value of the property of the three roads, placed at a very liberal figure, would be less than \$150,000; the entire business carried on by all of them for persons or corporations other than the owners would be limited to perhaps \$2,000 a year. (See *Mercantile Bank v. New York*, 121 U. S. 161, 162.)

The character of these institutions might be further detailed, but nothing further could be said which would indicate any similarity between their property and that of those railroads which are common carriers, exercising the privileges granted by the state, including that of eminent domain. Under the circumstances, we do not believe it can be successfully claimed that the corporations, taxed under act 173, are injured by not being classed with, and having this property taxed according to the system applied to them.

(2.) These institutions are engaged principally in carrying on their own private business, which is not a railroad business. This fact alone makes them a separate and distinct class for purposes of taxation.

Dayton v. Coal & Iron Co., 99 Tenn. 578, 581;

Billings v. Illinois, 188 U. S. 102.

Had the legislature desired, it might have said that all those railroads which carry on business principally for others should constitute one class, that those railroads which carry on business principally for themselves as an incident to the lumber business or a business of similar character should be made a separate class and taxed by a separate system; and this would be legitimate, though the railroad company which carried on business principally for itself, also, in part, carried on business for others, and could, as to that part of its business, be construed to be a common carrier, which is impossible here. The proposition, as applied to the existing facts, is too clear for argument.

(3.) The railroad not owned by a railroad company has always been subject to taxation locally, the same as property owned by citizens generally. The property of the complainant companies has always been taxed specifically. In altering the system so as to bring specific tax paying institutions

to an ad valorem system of assessment and taxation, it was not necessary to include a railroad which was previously taxed by an ad valorem rule. That these institutions were, previous to 1902, taxed according to different systems is sufficient to justify a different classification for taxation purposes.

Railroad Company v. Harris, 99 Tenn. 706, 707;

Kidd v. Alabama, 188 U. S. 732.

*D. In general applying to failure to include sleeping car companies, interurban street railways and unincorporated railroads.*

(1.) If it is necessary for the state to classify sleeping car, street and interurban railroads and logging roads with steam railroad companies for purposes of taxation, it is equally necessary that they be classified together for police regulations, regulations as to rates to be charged, etc. This indicates the fallacy of the proposition that they must be classified together for any purpose.

(2.) Assuming that interurban, street railway, sleeping car and express companies, and institutions operating logging roads, are all engaged in railroad business, this does not affect the right of classification, as classification may be had among railroad companies. They may be classified for purposes of taxation, upon the amount of their gross earnings,<sup>2</sup> upon the fact that they extend beyond the boundaries of certain municipalities;<sup>3</sup> and for the purpose of fixing the rates for the

---

NOTE. <sup>2</sup> Commissioner of Railroads v. Wabash R. R. Co., 123 Mich., 669;

<sup>3</sup> San Francisco & N. P. Ry. Co. v. Board of Equalization, 60 Cal. 12;

transportation of passengers and freight upon the amount of their gross earnings,<sup>1</sup> upon the length or amount of their mileage,<sup>2</sup> or upon the territory in which they exist,<sup>3</sup> and classification based upon corporate existence<sup>4</sup> and the reservation of the right to alter, amend or repeal corporate charters,<sup>5</sup> has been sustained.

(3.) Admitting for purposes of argument that the property of these special companies or institutions is of the same character as that of complainant's, still it has no ground of complaint. The complainant can only complain of the invalidity of the classification made if it has been injured.

Cummings v. National Bank, 101 U. S. 160;

Clark v. Kansas City, 176 U. S. 118;

Supervisors v. Stanley, 105 U. S. 305.

There has been no injury to complainant from including the property of sleeping car, and interurban street railway, companies, and unincorporated roads with the general property of the state, instead of with the corporations taxed under act 173, but the opposite is the case and a benefit results, the rate of taxation of the complainant being reduced in proportion as the property subject to general taxation is increased.

Under the system of taxation in force in Michigan, taxes upon the general property are usually voted by the legislature or municipalities in a lump sum, though there are some

---

NOTE. <sup>1</sup> Chicago B. & Q. v. Iowa, 94 U. S. 155; Wellman v.

Chicago & G. T. Ry. Co., 83 Mich. 592, 599;

<sup>2</sup> Dow v. Biedelman, 125 U. S. 680; 49 Ark., 335, 294,

<sup>3</sup> Wellman v. Chicago & G. T. Ry., 83 Mich., 592, 600;

<sup>4</sup> Tullis v. Lake Erie & Western Ry. Co., 175 U. S. 351;

<sup>5</sup> St. Louis & Iron Mountain Ry. Co. v. Paul, 173 U. S. 406.



exceptions to the rule. The property is assessed at its value without regard to the amount to be raised, and naturally as the amount of property increases the rate decreases, and as the rate on the general property decreases, the taxes of the corporations taxed under act 173 decrease as the amount of their taxes is not affected or influenced by the amount of property in the class formed by act 173 but rather by the amount taxed generally.

(4.) A further reason why the complainant has no cause for complaint is that it is incorporated under a statute reserving the right to alter, amend, or repeal. Previous to 1901, the special law for the taxation of railroad corporations, was a part of the act of incorporation which was in that year superseded by the separate act (173) imposing the system here in question.

Act 173 was a proper exercise of the reserved right. By the reservation of that right, the corporation is kept under control; the state may where the right is reserved repeal the act of incorporation, take away any rights dependent for their existence upon the continuance of the charter contract, and in fact do anything which does not impair vested property rights or by way of amendment materially alter the purpose of the incorporation. The legislation in question here does none of these things.

By incorporation under the statute, the railroad corporation acquiesced in its separate treatment and classification for taxation purposes, and the act of the legislature continues that arrangement.

The propriety of this is apparent when we consider, that the system of taxation taken as a whole has for its purpose the imposition of the same rate on each class as nearly as the same may be ascertained, and, that the result is that by the separate classification of these companies

and institutions, the railroad corporation is benefited and not prejudiced. As pointed out, the distinction between the classes is formal and not substantial; the classification: is, to subject that property which had previously escaped its fair share of the state's burdens to taxation equal to that borne by others; is for the purpose of permitting the application of a unit system of taxation where it is needed to secure proper assessments; is to fix a proper class for the purpose of a state tax, and to do this the reserved legislative power was properly exercised.

The question is ruled by *St. Louis & Iron Mountain Ry. Co. v. Paul* (173 U. S. 406), where the reserved power over corporations was held to permit the application to railroad corporations alone of requirements regarding the payment of employees which could not legally be applied to individuals operating railroads.

See *Leep v. Railway Company*, 58 Ark. 407.

(5.) The fourteenth amendment permits exemptions from taxation and the states have uniformly extended them to such persons and property as they deemed requisite without restraint by the Federal constitution. The state might have exempted from taxation the property of any or all of the specific companies mentioned, and had it done so the railroad corporations would have had no ground of complaint. In *Florida Central, etc. Railroad Company v. Reynolds* (183 U. S. 480), it was said:

"In the light of these decisions, if the State of Florida had deemed it for the best interests of its people to encourage the building of railroads by exempting their property from taxation, such exemption could not have been adjudged in conflict with the Fourteenth Amendment, even though thereby the burden of taxation upon other property in the state was largely increased. In-

deed, that was the policy of the state prior to the Constitution of 1868, and, conversely, if the state had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to overthrow its action."

If the state could grant a total exemption, it might grant a partial one or so far as the right of other corporations to complain was concerned, might tax by an entirely different system.

Missouri v. Dockery, 191 U. S. 170, 171.

The principle which in many cases has permitted exemptions, must apply here as the property of the corporations taxed under act 173, and that of the specific companies enumerated is as widely different each from the other as was that taxed or exempted in the following cases:

Billings v. Illinois, 188 U. S. 97;

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283;

American Sugar Refining Co. v. Louisiana, 179 U. S. 89;

Cook v. Marshall County, 196 U. S. 274.

**FOURTH.**

*What has been said disposes of the question of classification and we now consider:*

**The peculiarities of the Michigan system for the taxation of railroad property, and the specific points of discrimination claimed as violating the fourteenth amendment.**

*These may be outlined as follows:*

**I.** The deduction of debts from credits is permitted to property owners generally, while denied to the corporations taxed by the state board of assessors. (*post p. 120.*)

**II.** The system of taxation through the medium of an average rate improperly treats the corporations taxed under act 173 differently than property owners generally in this:

**A.** That the rate is dependent upon the action of local assessing officers within whose jurisdictions complainant has no property, before whom it has no right to be heard, and against whose acts, if illegal, it has no redress. (*post p. 146.*)

**B.** That this system compels payment of taxes by complainant based on expenditures of local governments whose benefits they do not share, while other property owners pay taxes based upon the expenditures of municipalities to which their property belongs. (*post p. 156.*)

**C.** That complainant is denied the right of hearing on the rate of taxation which is accorded to other property owners. (*post p. 162.*)

**D.** That it is taxed at a higher rate than that applied to other property owners. (*post p. 166.*)

**E.** That it is denied the right of equalization which is accorded as between property owners in general.

(*post p. 173.*)

F. That complainant's taxes are by this system fixed without reference to the needs of the community receiving the taxes. (post p. 179.)

G. That act 173 does not state the tax, or its object, which is the requirement and practice with regard to other tax laws. (post p. 186.)

H. That the same rate is required from all railroad companies regardless of the local rate of the municipalities in which their property is located. (post p. 194.)

# I.

**Does discrimination in violation of the fourteenth amendment result from permitting the deduction of debts from credits to property owners generally, but not to railroad corporations?**

A. This question is incident to and governed by those of the right of the state to classify property for taxation purposes, and whether railroad property may be selected as a distinct class.

We have indicated that the classification made is proper and that where proper classification is made, the imposition of different rates of taxation, and rules of valuation, assessment and review upon the several classes, does not violate the fourteenth amendment. If the classification made by act 173 is proper, the refusal to permit deduction of debts from credits to corporations taxed under it, while permitting that deduction to other property owners, is not a discrimination denying equal protection of the laws.

That a difference of the character of that here urged, even if it should amount to a difference in the rule of valuation, which we do not believe can be the case, can be made, is clearly sustained in *Travellers' Life Ins. Co. v. Connecticut*, 185 U. S. 364, where the shares of stock possessed by resident and non-

resident stockholders in domestic insurance companies were taxed upon their value by different systems and at different rates; in the one class the real estate owned by the corporation was included in reaching the value, in the other it was excluded. It was held that the classification being proper the difference was permissible. I perceive no reason why that case does not govern here.

B. The purpose of act 173 is not to tax the property of the railroad corporation, simply because of railroad ownership, but because it is engaged in carrying on a particular business; the classification is made upon the basis of the *use* made of the property.

The credits of railroad corporations are railroad credits and railroad property arising in the carrying on of a railroad business and are so different from those of individuals and other corporations as to render it permissible and proper to place them in different classes, subject to different rules of valuation and assessment. Like the other railway property, such as roadbed, rolling stock; etc., the credits form an item of the property of the corporation necessarily engaged in its business; that business could not be continued, without the use of its present or equivalent credits and indebtedness.

(1.) A railroad corporation is created by statute for a specified purpose, with specified powers, and has no authority to engage in business or own property except in carrying out the purposes designated by law.

People v. River Raisin & L. E. R. R. Co., 12 Mich. 389, 395;

Am. & Eng. Ency. of Law (2nd. ed.) Vol. 7, pp. 704, 717.

It follows that everything owned by the railroad corporation, in the absence of contrary statutory provision, must be property used in the railroad business.

The general railroad law under which the complainant exists and does business in Michigan, does not extend the authority of the corporations organized thereunder to hold property beyond the purposes of their creation, and contains nothing to vary the general rule above stated.

By section 1 of article I, the authority to hold property is stated to be that upon filing articles of association, the shareholders become a body corporate,

"capable in law of purchasing, holding and conveying any real and personal property whatever, necessary for the construction, maintenance and operation of said railroad and for the erection of all necessary buildings, yards and appurtenances for the use of the same."

(§ 6223, *C. L.* 1897.)

By section 9 of article II, stating the general powers of railroad companies, they are authorized to receive, hold and take voluntary grants and donations of real estate and other property, but the estate thus received "shall be held and used for the purposes of such grant only." And to purchase "and take possession of, hold and use all such lands and real estate, franchises and other property as may be necessary for the construction, maintenance and accommodation of its railroad," (§ 6234, *C. L.* 1897. *See also* §§ 6242, 6253, 6267, *C. L.* 1897), etc.

The express authority given by the act to create debts or credits refers exclusively to incidents of the railroad business. (§ 6269, 6333, 6253, *C. L.* 1897.)

(2.) That credits and choses in action generally of railroad corporations constitute railroad property as distinguished from property simply owned by railroad companies, has been adjudicated. A Michigan statute provided for the taxation of railroad companies at a certain graduated rate per cent on the gross income received in carrying on the business. In *Detroit, Grand Rapids & Western Railroad Co. v. Railroad*

*Commissioner* (119 Mich. 132), the railroad company, relator, claimed that the interest received by it on loans and deposits was not a part of the gross income received in carrying on its business, within the meaning of the statute. The court refused to accept this contention and held that the interest on loans and deposits should be included in the earnings from the railroad business, for the purpose of fixing the tax.

In *Chamberlain v. Walter* (60 Fed. 788, 793), it was held that a railroad is to be regarded a unit of which all its property is a part. The court there said:

"A railroad is a unit, every part contributing to its purposes as a whole. If it be a corporation, its corporate purpose is the maintaining a railroad, and all and every part of this property must contribute to this purpose. Its right of eminent domain is limited to this purpose. This unit is made up of lands, personal property, *choses in action*, easements, all dependent upon and inseparable from each other, deriving their value from this inseparability,—from the fact that they contribute to this unit. They differ from every other species of property, and the discrimination made, as between them and other corporations and individuals, in the methods and instrumentality by which the value of their property is ascertained, is not invalid. If they separated the component parts and attempted to fix separate values upon them, they would enter into an impossible task. The value of the lands of a railroad depend much on the character and condition and completeness of its rolling stock. The utility and consequent value of the rolling stock depend largely upon the facilities at stations and at termini; the amount, location, and character of the land used therefore."



Franklin County v. Nashville, etc. Ry. Co., 12 Lea (Tenn.) 521, 537;

Adams Express Company v. Ohio, 166 U. S. 185.

Decisive of this question is *McHenry v. Alford* (168 U. S. 651, 656), which, though the property under discussion was not credits, but lands, presents an exact parallel with the case at bar. There the railroad corporation was specifically taxed at a certain rate per cent on its gross earnings to be in lieu of all other taxes on its property. Certain municipalities of the state then sought to tax the detached lands, within the land grant to the railroad company, which were covered by mortgage given to secure indebtedness incurred in constructing the road. This taxation was resisted on the ground that the lands were covered by the specific tax, and this position was answered by the claim that, as those lands were similar in all respects to the similar lands owned by individuals, they could not be exempted or covered by the specific rate of taxation, while owned by the railroad company, while the similar lands owned by individuals and others were taxed by an ad valorem rule, without violating the rule of equality of the fourteenth amendment. This court upheld the taxation of the lands under the specific rate upon gross earnings, regardless of the fact that a different rule was applied to similar lands differently held, on the ground that the lands furnished the security upon which the money was borrowed to build the road and so contributed to the carrying on of, and in fact were engaged in, the railroad business, and were railroad property, saying:

"The lands are closely connected with the railroad and with its operation, and they are not in the same condition as a subject for taxation as are the lands of an individual. While we agree that property of the same kind and under the same condition and used for the same purpose cannot be divided into different

classes for purposes of taxation and taxed by a different rule simply because it belongs to different owners, yet, where the situation and the possible use and the present condition of the ownership of lands are wholly different, such as they are in this case, from ordinary ownership, a classification is not arbitrary nor unreasonable which places such lands outside the class of lands owned in the ordinary way by individuals."

The lands in that case stand in a similar position to the credits in this, except that opportunity there, to claim use in a railroad business, was not as strong as here. Here, both the credits and liabilities proven were those arising from the conduct of the railroad business. (*Record* 351, 266.) In that case, the reason the lands were held to be engaged in a railroad business was because they secured the payment of a debt necessarily incurred in constructing the road, and it necessarily follows that, if the security for the debt were, by reason of its being such security, property engaged in a railroad business, the debt itself, or a credit of a similar character, would likewise be.

(3.) The only credits proven to be possessed by the complainant or by any other railroad company, were those which arose from the conduct of the railroad business. There is no proof that the complainant or any other company possessed any credits, beyond those proven or, not engaged in its railroad business, and which would not come under the designation of railroad property. The presumption is that all of the property of a corporation is engaged in its business.

Adams Express Company v. Ohio, 166 U. S. 223; 165 U. S. 227.

C. Act 173 makes no specific requirement of the taxation of credits of the corporations subject to its provisions with-

out granting deductions for debts. If it be determined that such a deduction is necessary, to render the statute constitutional, its operation must be so limited as to exclude therefrom credits belonging to the company subject to its provisions to the extent of its bona fide indebtedness, applying the rule, that where two constructions of a statute are possible, one of which would render it constitutional, and the other unconstitutional, the former must be adopted.

In *First Natl. Bank of St. Joseph v. St. Joseph* (46 Mich. 529), a similar question to that here presented was passed upon by Judge Cooley.

The general tax law accorded a deduction of debts from credits; the law for the taxation of stock in National banks did not in terms make similar provision and the court construed the statute as not requiring the inclusion of credits and of the claim of discrimination, said:

"In our judgment the state law and the act of Congress must be read together, and the state officers must act in harmony with the later. We think there is nothing to prevent this. While we do not ourselves discover any apparent inconsistency in the rule indicated by our statute, yet, even if such inconsistency might appear from a strict interpretation of the language, we think that there can be no difficulty in avoiding it in practice if found—as we think it will not be—to result from a construction of the state law by itself."

(2.) As there is no specific inclusion of credits if the provision permitting a deduction therefrom of debts is necessary to render the statute constitutional, it should be incorporated into the statute by construction. This would follow the action of the state board of assessors in making the assessment, as that board did not, in its assessment, include credits. (Record 431-438.) This taken as a contemporaneous con-

struction of the statute is entitled to consideration. (Attorney General v. Glaser, 102 Mich., 405.)

(3.) It will not be inappropriate to indicate that it was possible for the state board of assessors to value the property of the railroad corporations, as it says it has done, without including in the valuation their credits. There are a number of approved methods of finding the value of railroad, and other similar property. Three of those methods have been applied to the railroad property in this case, and their character, and the method of their application will be found to be outlined in detail in the record. (pp. 498, 499, 500.) Those plans are:

- (a) *The stock and bond plan.*
- (b) *The inventory plan, which is the inventory value of the physical property, supplemented by the capitalization of the net surplus.*
- (c) *The capitalization of net earnings.*

The state board of assessors, in its report, stated that the assessments of 1902 were not made by the application of any one system of valuation, but comprehended all separate systems, and that the results produced by each, enter into the valuations finally placed upon the property. (1902 *Report of Board of State Tax Comrs. etc.*, p. 51), and the witness Walker, the expert employed by the board of assessors to assist in the 1902 assessments, testifies (*Record*, pp. 613, 639) to the same effect:

- (a) In the stock and bond plan of valuation, the value of the stock represents in a degree the judgment of investors of the value of the property. To that extent, credits might be taken into consideration, but it is the testimony of complainant's experts that the market in determining the value of stocks and bonds, takes into account the earning

capacity and dividends, but does not pay any attention to the value of the property or assets. (*See testimony of Johnson, Record, p. 884; also, testimony of Woodlock, Record, p. 660.*)

(b) In the application of the inventory method, credits might in certain cases be included, but could not, in the regular application of the plan, where there was a net corporate surplus to capitalize. Credits were not included in the application of this method in 1900, the results of which were before the board in making its assessments of 1902.

(c) In the capitalization of net earnings, physical property, and, of course, credits, could not be taken into consideration as the value would depend absolutely upon the amount of income, and would be uninfluenced by the amount of credits.

We have indicated that, while in two of the methods applied, it would be possible to include credits, and in the other, it would be impossible, in any one of the methods, credits are not necessarily included, and can readily be excluded. This leaves the subject to be determined by the testimony upon the question of whether the credits were or were not included. Two of the members of the state board of assessors testify that they were not included (*Record, p. 431, 438*), a third made affidavit to that effect, (*Record, p. 438*), and there is no testimony to the effect that credits were included to controvert this.

(4.) If act 173 could be construed as subjecting the credits of the corporations taxed thereunder to taxation, without deduction for indebtedness, and so construed violates rights

of complainant, such provision could be eliminated from the law without disturbing the statute.

*Supervisors v. Stanley*, 105 U. S. 305;

*Evansville Bank v. Britton*, 105 U. S. 322;

*Insurance Co. v. Board of Assessors*, 95 Mich. 468;

*State v. Smiley*, 65 Kansas, 255;

*Pullman State Bank v. Manning*, 18 Wash. 255;

*State v. Duluth Gas & Water Co.*, 78 N. W. (Minn.) 1032.

Of this question *Supervisors v. Stanley* (105 U. S. 305) is decisive and a close parallel. In that case the New York statute for the taxation of monied securities permitted a deduction of debts from personal property upon the deduction being claimed by affidavit. The act for the taxation of bank shares including those of national banks contained no provision for the deduction of debts and the state court of appeals had construed the statute as requiring the taxation of bank shares without deduction for debts owed. Upon the claim of discrimination and resulting invalidity of the statute presented to this court, it was held, that it was bound by the construction of the state court that the statute did not intend the deduction of debts in taxing bank shares, and that, in view of this construction the act was:

(a) Valid so far as it applied to persons possessing no debts.

(b) Also valid so far as it applied to persons who did not claim the deduction.

(c) It was invalid only so far as it prevented the deduction when the basis therefore existed and it was claimed; in other words it was voidable in a proper case.

(d) That where the tax was assessed without deduction for debts in a case where the deduction

was proper, it was valid as to the portion thereof in excess of debts claimed

Hills v. Exchange Bank, 105 U. S. 319, 322.

D. (1.) Assuming that act 173 provides for the taxation of only those credits which are a part of the railroad business, without deduction, that the act, to this extent is constitutional we do not believe can be questioned. If the state board of assessors included any credits not a part of the railroad business, though it is clear that it did not (*Record*, 431, 438), it exceeded its authority.

(2.) The complainant made no claim, at the time of the assessment or upon the review, that it possessed, or there was included in the assessment, credits which represented investments apart from the railroad business, nor is there any proof in this case that it possessed any such property.

"Presumably, all that a corporation has it used in the transaction of its business, and if it has accumulated assets which, for any reason, affect the question of taxation, it should disclose them. It is called upon to make return of its property, and if its return admits that it is possessed of property of a certain value and does not disclose anything to show that any portion thereof is not subject to taxation, it cannot complain if the state treats its property as all taxable." (166 U. S. 223.)

(3.) The complainant made no complaint of the unwarranted inclusion of its credits without deduction for debts owed by it and made no application to the board of review, to have a deduction on account of indebtedness. The statute gave full opportunity for hearing, and complainant is estopped from questioning the assessment, by reason of the inclusion of any element therein which should not have been included

unless it appeared and protested. It was for it to object to the inclusion of any credits, which could not properly be included, and to apply for a reduction on account thereof.

First Nat. Bank of St. Joseph. v. St. Joseph, 46 Mich. 526;

Central Pacific Ry. Co. v. California, 162 U. S. 128;  
Pittsburgh, etc. R. R. Co. v. Backus, 154 U. S. 421;  
Township of Caledonia v. Rose, 94 Mich. 216;  
Stanley v. Supervisors of Albany, 121 U. S. 535;  
105 U. S. 306;

Hepburn v. School Directors, 90 U. S. 480.

In *First National Bank of St. Joseph v. St. Joseph* (46 Mich. 526), the question before the court was whether a discrimination resulted from the state statute permitting deduction of debts from credits, where no such deduction was granted in the assessment of shares of national banks. It was there held that the plaintiff, in order to be entitled to relief, should have made its claim for reduction before the assessment was made absolute.

In *Stanley v. Supervisors* (121 U. S. 535, 550) it was said:

"In nearly all the states, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. \* \* \* To these boards of revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of



the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive whatever errors may have been committed in the assessment."

Only where demand would have been unavailing, is it unnecessary to claim the deduction.

Hills v. Exchange Bank, 105 U. S. 321;

Whitbeck v. Mercantile National Bank, 127 U. S. 193.

E. The deduction of debts from credits, or from personal property is not a change in the rule of valuation, does not vary the rule of assessment, or violate the requirement of assessment at cash value, and is nothing more or less than an exemption. In such cases the property which is taxed is assessed and valued and taxed in the same method in which it would be taxed if credits were included.

F. The propriety of permitting a deduction of debts from credits to one and not to another class, and the effect of the resulting discrimination, has never been directly adjudicated by this court (except possibly under the statute permitting the taxation of shares in national banks and forbidding discrimination). A justice of this court (Field), sitting in circuit in California, considered and passed upon this question adversely to our contention, in two cases (San Mateo County v. So. Pacific R. R. Co., 13 Fed. 722 and 145; Santa Clara County v. So. Pacific Ry. Co., 18 Fed. 385). In these cases was considered the constitutional provision of California (18 Fed. 390) declaring:

"A mortgage, deed of trust, contract or other obliga-

tion by which a debt is secured shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby."

And that,

"Except as to railroad and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof."

The latter provision was claimed by the railroad corporations to deprive them of due process, and equal protection, of law. The decision reached was that by applying one rule to railroad and other quasi public corporations and their property, and another to other property, the railroad companies and their property were discriminated against, and that such classification was based on improper grounds; and it was affirmatively stated that any classification of property for taxation dependent upon the nature of its ownership rather than on the character of the property, was improper.

(1.) Those cases are different from the case here presented in the following particulars:

(a) In this case, the deduction of debts from credits given by statute to the general property owner throughout the state is simply an exemption of credits to that extent to that class of property, while in the other class, that formed by act 173, they may be taxed.

The rule is settled that once the classes are properly formed, then it is permissible to apply different incidents, rules of valuation and rates, and to take into consideration different elements, in the assessment and taxation of the different

classes, even to the extent of exempting entirely the property of one class and throwing the entire burden upon the property of another class.

The language used by the circuit judge upon this question takes this view. He says:

"In one class properly segregated it would be competent for the state to exempt any part of the property or all of the property, while the same kind of property in another class was made to bear the whole burden of taxation, and a *fortiori* in reducing credits by debits in one class, and not in another, or exempting credits entirely in one class and taxing them in another, does not exceed the power of the state, nor deny the equal protection of the laws." (*Record*, 849, 848.)

In *Florida, etc. Railroad Company v. Reynolds* (183 U. S. 480), a statute selecting for the purpose of reassessment property of railroad companies only, was held valid, the court saying:

"If the state had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to over-throw its action."

*Missouri v. Dockery*, 191 U. S. 170, 171.

(b) The Michigan system is limited to taxing, by a special system, the property of railroad corporations which is engaged in their separate and peculiar business. This did not seem to be the case with the California law, and the system there applied the separate rule to all the property owned by railroad and other quasi public corporations.

(c) In the California cases the effect was to

cause the railroad corporation to bear the burden of taxation of the mortgagees or bond holders. (18 Fed. 392-3.)

(2.) If these differences are not sufficient to distinguish the California cases from that at bar, we can simply add that those cases are not in accord with the later decisions which have made clear the character and extent of the application of the fourteenth amendment to matters of taxation. Those decisions proceeded upon theories and set forth rules of law as governing the issues presented, which are entirely inconsistent with the later cases. Some of these errors are as follows:

(a) That the fourteenth amendment requires the taxation of the property of the different classes to be according to a rule of uniformity. (13 Fed., pages 733-735; 18 Fed., 395.)

It is now settled that, once the classification is established, the classes do not thereafter necessarily bear any relation to each other in any system of taxation which a state may see fit to adopt, but regulations, rates, methods of valuation, and exemptions can be applied or given to one class without regard to the rules applied to other classes.

(b) That assessments and taxation of property to satisfy the requirements of the amendment must be made with reference to a common ratio. (18 Federal, 400; 13 Fed., 734-5.) In other words, that no classification could be such as to justify independent treatment of the classes.

(c) That elements of value cannot be considered or eliminated in one class which are not likewise treated in the other classes. (18 Fed., 401-2; 13 Fed., 737-8.)

(d) That where there is only one rate, no reason for, or basis of, classification, which applies different rules of valuation, exists, and different rules of valuation can not be applied to the different classes. This theory would entirely destroy the right to give an exemption to one class that is not given to another class where the same rate is applied to each.

(3.) Each of the cases decided by Mr. Justice Field was reviewed by this court and disposed of on other grounds, despite his attempt, as indicated by his opinion, (118 U. S. 422), to place the decision on the constitutional grounds determined by him at circuit.

The law upon the several questions surrounding the classification of railroad property, the application to it of peculiar rules of valuation and assessment and the application thereto of different rates, is now so settled that this court *now* would not, and could not without violence to numerous of its decisions in point, sustain the rulings of Mr. Justice Field. His decisions are pioneers in the application of the fourteenth amendment to questions of taxation, and among the earliest in which the protection of this amendment was invoked in such matters, and of the first holding it restrictive of the taxing power of the states; this court had just said (96 U. S. 105), that this amendment "imposed no restrictions upon the states in regard to unequal taxation"; and the doctrine of classification was not then well understood, as is indicated by a comparison of these opinions with the rulings of subsequent cases. That property could be classified was established, but the extent of that classification was not defined or settled as it is today when it is established:

That any classification which bears a *just* and *reasonable* relation to the purposes for which made is permissible; that railroad property forms a separate class for purposes of taxa-

tion; and may, for those purposes, be differently distributed than other property; be accorded one hearing, while two or more are given to property owners generally; be reassessed without the re-assessment of other property; have its real estate valued every year, while other real estate is valued once in five years; be refused discount while it is given to property owners generally; be alone subjected to taxation to pay salaries of railroad commissioners; be taxed specifically, while other property is taxed upon its value; be subjected to assessment by a state board, where other property is assessed locally; and where property is properly classified, a different basis of valuation can be applied to the different classes,—thus one class of corporations can be taxed on the par value of its stocks and bonds, regardless of the actual value, while another class is taxed upon the actual, regardless of the par value; that all corporations may be taxed upon the face value of their securities, without causing discrimination between those whose actual value is above and those below actual value; that shares in a corporation may be separately classed and taxed for different purposes, the real estate of the corporation being in one class considered in reaching the stock's value, while not considered in the other.

Gulf, etc. R. R. Co. v. Ellis, 165 U. S. 150;

McHenry v. Alford, 168 U. S. 651;

State R. R. Tax Cases, 92 U. S. 575;

Col., etc. R. R. Co. v. Wright, 151 U. S. 470;

Kentucky Railroad Tax Cases, 115 U. S. 321;

Florida, etc. Ry. Co. v. Reynolds, 183 U. S. 480;

Chamberlain v. Walter, 60 Fed. 788;

Louisville & N. R. Co. v. Louisville, 29 S. W. (Ky.)

§ 865;

Charlotte, etc. R. R. Co. v. Gibbs, 142 U. S. 386;

**Pittsburgh C. C. & St. L. Ry. Co. v. Backus**, 154 U. S. 421;  
**Bell's Gap Ry. Co. v. Penn.**, 134 U. S. 232;  
**Merchants & M. Nat. Bank v. Penn.** 167 U. S. 461;  
**Travellers' Life Ins. Co. v. Connecticut**, 185 U. S. 364.

The effect of these decisions can be syllogized by saying that since Mr. Justice Field's opinion this court has decided that:

(a) Property engaged in railroad business may be made a special class for taxation purposes.

(b) Different rates and rules of valuation, assessment and review can be applied to the different classes.

(c) It is not essential that the assessment in the different classes be at the same rate or that the valuation be reached by a common ratio.

(d) Other and different rules of classification are proper and can be applied by a state in a taxing system than in classification for other purposes.

(e) Deductions can be made and elements considered in reaching the value in one class that are not made or considered in another.

(f) That once a proper classification is made, so far as the fourteenth amendment is concerned, the classes are thereafter separate and distinct, subject to different treatment in every respect in the legislative discretion, including the right to wholly exempt one class while taxing another.

(g) That property covered by the railroad mortgage is engaged in a railroad use which justifies a different classification.

(h) That classification may be made on the basis of use by quasi public corporations.

(4.) It is evident that the decisions of Mr. Justice Field in the *San Mateo* and *Santa Clara County* cases have never been regarded as laying down correct principles as to the application of the fourteenth amendment, and have never been followed in California. The constitutional provision declared unconstitutional in those cases is still followed and railroad and other property is still taxed thereunder, and the taxes imposed upon the railroad corporations are uniformly paid without protest.<sup>1</sup> (*Record, page 475.*)

In *Central Pac. R. R. Co. v. California*, (162 U. S. 91, 117), while the same question presented in the previous cases, was again raised, it was waived by counsel for the railroad company. This is significant of the fact that the railroad companies and their counsel have at least regarded the early decisions of Mr. Justice Field as being in effect overruled by the later cases.

(5.) The chronological history of the decisions of Judge Field in the *San Mateo & Santa Clara County Cases* (13 Fed. 722; 18 Fed 385), in connection with the *Albany Bank Cases*, shows conclusively that this court has expressly refused to recognize the decisions of Judge Field as entitled to consideration in opposition to the rule declared in the *Albany Bank Cases*, and indeed that he did not intend to run counter to the *Albany Bank Cases*.

In *Supervisors v. Stanley* (105 U. S. 305), decided at the October term, 1881, it was distinctly held that while the

---

<sup>1</sup>NOTE. The record (at p. 475) is in error as it omits the word "never" in the third paragraph of the letter of Mr. Wm. H. Alford. This should read: "The board has *never* followed the cases cited in your letter."



discrimination created by the New York Statute in refusing deduction of debts from credits in the case of national bank shares was unlawful, the statute was not rendered void, but was voidable only at the instance of one who had debts to deduct, and who had exhausted his remedy to that end.

In the cases of *Hills v. Exchange Bank*, and *Evansville Bank v. Britton*, decided at the same term immediately following the decision of the Stanley case, and reported in the order of their decision, the same rule was laid down. The solemnity of the decision was emphasized by the dissent of Justice Bradley from the judgment of the court in all three of the cases so far as they held the law valid except as to those who were actually indebted, claimed the benefit of deduction and actually set it up in a suit brought for relief. (105 U. S. 326.)

The *San Mateo County Case* was decided Sept. 25, 1882, and the *Santa Clara County Case* Sept. 18, 1883; both were actions to recover taxes assessed. In neither of the cases was reference made to *Supervisors v. Stanley*, although *Evansville Bank v. Britton* was cited to the effect only that taxation of shares without permitting the shareholders to deduct from the assessed valuation the amount of indebtedness which was allowed in case of other investments of monied capital was a discrimination against the act of Congress, and illegal. No reference was made to the decision in either the *Stanley*, the *Hills* or the *Britton Case* to the effect that such discrimination rendered the statute invalid only to the extent of actual injury shown in its operation.

It was held in both the *San Mateo and Santa Clara Cases* that the constitution of California expressly forbade the deduction in case of railroad indebtedness, that no notice of the assessment was provided by law, that no opportunity was in fact given the railroads to be heard as to their assessment, and that the deduction was not in fact made, Judge

Field intimating that the discriminating feature of the statute alone would have rendered it invalid only to the extent that injury was suffered.

The *Stanley Case* was again reviewed in this court May 2, 1887, several years after the decisions by Judge Field in the *San Mateo and Santa Clara Cases*. (121 U. S. 535.)

While these latter cases were cited in the briefs of counsel, they are not referred to in the opinion of the court in the *Stanley Case*, but the decision of that case as first reported in 1881 was solemnly re-affirmed in this language:

"After full consideration we held [in *Supervisors v. Stanley*] substantially this: That the statute of New York was in conflict with the act of Congress so far as it did not permit a stockholder of a national bank to deduct the amount of his just debts from the assessed value of his stock, while by the laws of the state the owner of all other personal taxable property was allowed to deduct such debts from its value; but that *neither the statute nor the assessment under it, was for that reason void*. If the stockholder had no debts to deduct, the mode of assessment adopted was not invalid as to him; he could not complain of it nor recover the taxes paid pursuant to it. If he had debts, the assessment without a deduction for them, in the estimate of the taxable value of the stock, *was only avoidable*. The assessing officers in making the assessment were acting within their authority until duly notified of the debts which were to be deducted. In such case, therefore, the duty devolved upon the stockholder to show to the assessing officer what his debts were, and to *take such steps as were required by the law to obtain a correction of the over-assessment*. We therefore decided \* \* \* that for the taxes collected upon the assessments alleged in the other counts, no

recovery would be had; the stockholders there mentioned not having produced evidence that they had presented to the assessors an affidavit of the amount which they would be entitled to deduct from the assessment of their shares \* \* \* *or that they had taken any steps under the laws of New York to correct the over-assessment complained of.*"

The rule as thus laid down in the previous decision was expressly affirmed, the court saying:

"If the assignors of the plaintiff had any just grounds of complaint of the assessment as excessive, they *should have pursued the course provided by statute for its correction*, or resorted to equity to enjoin the collection of the *illegal excess*, upon payment or tender of the amount due upon what they conceded to be a just valuation."

We submit that this statement of the history of the various decisions referred to conclusively shows that the decisions in the *Albany Bank Cases* are express authority for the proposition that the railroad companies cannot complain of the alleged discrimination (even if the Michigan statute should be construed as requiring it) without showing affirmatively that credits were in fact included in the assessment (without deduction of debts to the extent of such included credits), and thus an actual injury occasioned; and that even in such case, the assessment would be invalid only to the extent of the unlawful excess.

G. Assuming that the application of a different rule, in regard to the deduction of debts from credits, to railroad corporations than to other property owners and property would disturb the rule of equality,—then we contend that the general tax law of Michigan permitting the deduction of debts

from credits is unconstitutional as violating the rule of uniformity required by the state constitution, as a deduction of debts is permitted from credits while not permitted from other species of personal property.

The Michigan constitution, at present, provides for three systems of taxation:

*First*, "an uniform rule of taxation, except on property paying specific taxes" and property subject to assessment by a state board of assessors, to be provided by the legislature;

*Second*, an uniform rule of taxation for such property as shall be assessed by a state board of assessors, to be provided by the legislature, limited to the property of such corporations as the legislature may select;

*Third*, the collection of specific taxes from corporations.

The general tax law is the enactment carrying into effect the first system of taxation enumerated; all property taxed according to that system must be taxed by an uniform rule, and different modes of assessment, valuation, deduction, or different rates, as to or upon that property, are not permissible.

Pingree v. Auditor General, 120 Mich. 95.

The Michigan constitutional provision requiring uniformity is more stringent in operation than is the fourteenth amendment. The system declared invalid in the case last cited, by reason of the violation of the provision of the state constitution requiring uniformity, would have been valid as measured by the fourteenth amendment as construed by this court. An uniform rule means that all property subject to it shall be treated alike as to rate of taxation, method of valuation, and that "all property shall be subject to the same rule" of taxation. The legislature can, however, provide for exemptions.

State statutes permitting deduction of debts from credits,

while not permitting the deduction of debts from other personality, have been held to be invalid.

In re Construction of Revenue Law, 48 N. W. 813  
(S. D.)

In re Assessment and Collection of Taxes, 54 N. W.  
818, (S. D.)

Standard Life & Accident Association v. Assessors,  
95 Mich. 466;

Cit. St. Ry. Co. v. Com. Council, 125 Mich. 694;

Exchange Bank v. Himes, 3 Ohio St., 1;

San Mateo Co. v. So. Pac. R. R. Co., 13 Fed. 722;

State v. Smith, 63 N. E. 214—Dissenting opinion;

Santa Clara Co. v. So. Pac. R. R. Co., 18 Fed. 385;

State v. Duluth Gas & Water Co., 78 N. W. (Minn.)  
1032;

Jacksonville v. McConnel, 12 Ill. 138;

People's Loan, etc. Association v. Keith, 153 Ill.  
609;

People v. Worthington, 21 Ill. 171;

People v. McCreery, 34 Cal. 432;

People v. Gerke, 35 Cal. 677;

People v. Blk. Diamond Coal Co., 37 Cal. 54;

People v. Whortenby, 38 Cal. 461.

Contra,

State v. Smith, 63 N. E. (Ind.) 25; 64 N. E. (Ind.)  
18, Rehearing;

State v. Moffett, 67 N. W. (Minn.) 68; 64 Minn. 292;

Fayette Co. v. Bank, 10 L. R. A. 196;

Florer v. Sheridan, 137 Ind. 28;

Central Pac. R. R. Co. v. Board of Equalization, 60  
Cal. 35.

The following cases, which refer to discrimination against national banks by permitting deduction of debts from credits

and not permitting them from the shares of national banks;  
sustain the proposition:

Merchant's Nat. Bank v. Shields, 59 Fed. 952;

Evansville Nat. Bank v. Britton, 8 Fed. 867;

Whitbeck v. Merchant's Nat. Bank, 127 U. S. 193;

See Extended note, 45 L. R. A. 751.

## II.

**A.—Is the rate dependent on the action of local assessing officers within whose jurisdiction complainant has no property, before whom it has no right to be heard, and against whose acts, if illegal, it has no redress.**

(1.) This objection is based on a false premise; it assumes that local officers fix and determine the rate; such is not the fact.

The rate is fixed in the constitution. It is the average rate imposed on other property of the state, and to be made certain in amount by the mathematical calculation set forth in the statute, and—"a rate ascertained as the result of that which is enacted may be regarded as authorized by law, as well as a rate declared in terms." (*Morton v. Comptroller*, 4 S. C. 477.)

The purpose to be effected by the establishment of this rate was equality. It was desired to place the property of the corporations taxed under act 173 on the same basis in the amount of taxation imposed as that assessed throughout the state generally. This occasioned a necessity for a system of measurement to apply the rate borne by the general property in the state to the property of the corporations, and to satisfy this necessity, and to produce the equality, the most effective plan was found to be the average rate. This clearly does not leave the rate to be determined by the local officers or municipalities.

(a) The local officer does not act in contemplation of the taxes levied under act 173, and no duty is laid upon him because of that system. He proceeds in every respect as he proceeded previous to the amendment of the constitution and the enactment of act 173. They might be repealed and he would act no differently than now.

(b) Every act of the local officer pertains to his duty to his local municipality. He or it cannot directly affect the average rate. They have no authority over it, or any element entering into it for the purpose of directly affecting it, or its amount. They are charged with the duty of raising taxes within and for their particular municipality, and act within the limits of their jurisdiction without regard to the effect which their action may have on the rate of taxation to be imposed upon the property of corporations subject to act 173.

The taxation which was the result of the action of the municipality and its officers becomes, under the constitution and statute, an element of the average rate to be imposed upon the property of complainant. This is not because they have any authority over the rate, but because the result of their action,—the tax rate which that action imposed upon the property within the municipality—and the action of every other local municipality throughout the state is taken as the measure by which the amount of the corporations' taxes are determined.

(c) If the constitution had referred to the taxes of a particular past year as fixing the basis of the railroad taxes for all time to come, there would be no question of the validity of the method of fixing the rate. What has been done is in effect identical with that, though more equitable, as the taxes upon the railroad corporation vary from year to year with the variation of the general assessments throughout the state, and the equality which was sought is produced.

(d) It is not the local officer or municipality



upon whose action depends the tax rate to be imposed upon the railroad corporation, but it is the *fact*,—the figures and data—which has come into existence by reason of their action and which constitute a fact of record. The question is, what rate have the general properties of the state borne, and when we determine that question, we find the rate which the railroad property should bear.

(e) If we assume that the local officer or municipality might act so as to increase in any degree the average rate, the increase does not result from any act directed to that end, but from an act directed to increase the taxes assessed within the municipality, and any increase in the average rate can only occur from the fact of an increase in the taxes borne by the general property.

(f) If the fact that the result of the action of the local officer or municipality enters into the rate makes that rate any the less legislative or constitutional, the same effect would be produced by the act of any property owner who, by doing what he has full authority to do in moving his property into or from a particular taxing district, increases or decreases the tax rate in that district. It will not for a moment *be claimed* that this renders the rate any the less legislative or constitutional.

The rate is from year to year an uncertain amount until the facts have transpired which are to fix it. In this respect it is similar to the taxes proportioned upon earnings which have been universally sustained. There the tax is dependent in amount upon the earnings, but it would not be contended for a moment that the tax was fixed and determined by the earnings. The true state-

ment is it is fixed and determined by the legislature but measured by the earnings.

The people had full authority to fix this rate, and having that authority, fixed it to be the same rate as is paid by a certain other class of property. The rate was fixed necessarily by the body which had the authority to fix it, rather than by the municipalities, by whose rate it was measured.

We can hardly conceive complainant to be honest in the contention that this rate is not fixed in the constitution, and that it is dependent upon the action of any local municipal bodies and officers.

(2.) The legislature, by statute, and likewise—the people, by constitutional provision, have authority to impose any rate of taxation they see fit. The rate imposed, the reasons for its imposition and the basis of measurement, are all matters of policy which do not concern the courts, and which are exclusively within the jurisdiction of the legislature and people. (*Spencer v. Merchant*, 125 U. S. 345; *Fay v. Wood*, 65 Mich. 401).

Mr. Chief Justice Marshall said, of the power of taxation:

“The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.” (*McCulloch v. Maryland*, 4 Wheat. (17 U. S.) 316, 428.)

“This vital power may be abused; but the constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom and justice of the representative body and its relation with its constituents furnish the only security,

where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally." (*Providence Bank v. Billings*, 4 Peters (29 U. S.) 568.)

In *Wharton v. School District* (42 Pa. St. 364), attempt was made to enjoin school directors from the levy of a tax regularly voted. It was there said:

"The power of taxation, altogether legislative and in no degree judicial, is committed by the legislature, in the matter of schools, to the directors of school districts. If the directors refuse to perform their duties, the court can compel them; \* \* \* but if they exercise their unquestionable powers unwisely, there is no judicial remedy." "This [says Judge Cooley] is a clear and strong statement of a wise and salutary general principle." (*Taxation* (2 Ed.) 343.)

It would be possible for the people or the legislature to have taxed these corporations at any fixed rate (*Guthrie on 14th Amendment*, p. 128); say one, two or three dollars upon each one thousand dollars of valuation, or to use any other basis of measurement; e. g., it would have been possible to provide that the rate imposed on corporations of Illinois should be the rate imposed on corporations by Michigan. Here we would have a rate measured by a basis beyond the jurisdiction of the state, over which the state had no control, before whom the corporations could not appear, against whose illegal action there would be no redress, and still the rate would not be subject to constitutional objection, as the matter of amount is entirely one of legislative discretion.

The subject is one over which the legislature and people had plenary control; it was for them to designate the rate or the rule by which it should be measured, and the mode of ascertaining the rate is immaterial. Of this, the decision of this court in *Home Life Insurance Co. v. New York* (134

U. S. 594, 660), is conclusive; it was there said, of a tax imposed upon certain corporations:

"The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows."

The same rule was enunciated in *Maine v. Grand Trunk* (142 U. S. 217, 228, 229), where a rate of taxation was fixed by reference to receipts from interstate commerce over which the state, of course, had no control. It was there said:

"The character of the tax or its validity is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation, is open to the consideration of the State, in determining what may be justly exacted for the privilege. The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable and likely to produce the most satisfactory results, both to the State and the corporation taxed. \* \* \* A resort to those receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a guide to a reasonable conclusion as to the amount of the excise tax which should be levied; and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company, or any regulation of commerce which consists in such transportation. If the amount ascertained were specifically imposed as the tax, no objection to its validity would be pretended. And if the inquiry of the

State as to the value of the privilege were limited to receipts of certain past years instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its character. There is no levy by the statute on the receipts themselves, either in form or fact; they constitute, as said above, simply the means of ascertaining the value of the privilege conferred."

*Comr. of Railroads v. Wabash Railroad Co.*, 126 Mich. 115;

*Cumberland & Penn. R. R. Co. v. State*, 92 Md. 668, 90;

*Plummer v. Coler*, 178 U. S. 115, 127, 134:

*Snyder v. Bettman*, 190 U. S. 254;

*Wisconsin & Mich. Ry. Co. v. Powers*, 191 U. S. 387.

As said by Mr. Justice Bradley in *Legal Tender Cases*, (12 Wall. (79 U. S.) 561,

"the nation itself, speaking by its representatives has a choice of methods and is the master of its own discretion,"

and having full authority over the mode of taxation and rate to be imposed, it can use any basis of measurement it desires, and the question of policy and government decided by its action is not open to question. It was said in *State v. Terre Haute* (130 Ind. 443):

"Where the principal subject belongs, there the incidents belong. Means, methods and the like belong to the department that is vested with power over the general subject. It is for that department to make choice of modes and means."

*Society for Savings v. Coite*, 73 U. S. 594, 608;

*State v. Haworth*, 122 Ind. 466, 467.

(3.) Complainant is not, however, without right to appear before the local reviewing boards and be heard on questions affecting its interests. If it is interested in having perfected any defects of undervaluation of the property, the average rate imposed upon which is to be imposed upon its property, the statute gives authority to it to appear before the board of review and makes it the duty of that board (at its first session), to correct assessments which are either under or over value, and it is likewise the duty of the board of supervisors to eliminate from taxes to be imposed all illegal items.

The language of the statute (§ 3852, *C. L.* 1897), in this particular is, that the board of review

*"of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column."* (3852 *C. L.* 1897.)

The board of review (at its second session),

*"at the request of any person whose property is assessed thereon or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property, in such manner as in their judgment will make the valuation thereof relatively just and equal."* (3853 *C. L.* 1897.)

The aim of these statutes is to secure correct assessment

rolls, with the taxable property placed thereon at its true cash value. If this does not result from the assessment by the supervisor, it is competent for the board of review, either on its own motion, or on application (at least by any party interested, and probably by any person) to correct the assessment. The effect is to give complainant the right to object in the several municipalities to irregular and illegal assessment of other property than its own.

That the authority of a person to object upon review to the irregularity of assessments made is not limited to those of his own property, is indicated by the statute and the cases.

*Avery v. East Saginaw*, 44 Mich. 590;

*Dundee Mort. Trust & Invest. Co. v. Charlton*, 32 Fed. 192, 194;

*State v. Dodge Co.*, 20 Neb. 600;

*St. Louis Bridge Co. v. People*, 128 Ill. 428;

*Detroit Common Council v. Detroit Board of Assessors*, 91 Mich. 88.

In *St. Louis Bridge Co. v. People* (128 Ill. 428), the statute was that the assessment may be reviewed on application of "any person who shall complain;" in this, being similar to our statute, and it was held that the right of complaint was not confined to taxpayers, by the terms of the section.

The appearance to correct assessments of the general property is not required to be before the local officers, but may be before the board of state tax commissioners, which has supervision of all of the tax rolls in the state. (Act 154 of 1899, §§ 152, 153.)

(4.) In the particulars to which this objection relates, our statute is similar to that of Missouri, (*See post p. 183*) imposing school taxes on railroads. There, the average rate levied in the several municipalities of the county is imposed upon the railroads, and the system has been held to violate

no provision of the state or Federal constitutions. In one case, the objection raised and overruled was, that the act was invalid as requiring the use, in determining the average rate, of taxes assessed in municipalities in which the railroads had no property.

Chicago & Alton R. R. Co. v. Lamkin, 97 Mo. 496.

(5.) The taxpayer is not entitled to notice of and opportunity for hearing at each stage of the proceeding, which results in imposing taxes upon his property. It has uniformly been held sufficient if he is given an opportunity for hearing at some stage of the proceeding, or in proceedings to contest enforcement of the tax. In this case, his rights are fully preserved by permitting him, in judicial proceedings, such as the present, to inquire into the legality and regularity of the proceedings resulting in this tax. (*Cases see post pp. 165, 196, 200.*)



**B.—Is the average rate system invalid as compelling the payment of taxes by complainant based on expenditures of local governments whose benefits it does not share, while other property owners pay taxes based on expenditures of the municipalities in which their property is located?**

This question is closely related to that last discussed, and the considerations there advanced as upholding the plenary authority of the legislature to fix and determine tax rates, and to use for that purpose any basis of measurement it sees fit, are equally controlling here.

The following additional answers to complainant's claim may be made:

(1.) The tax imposed upon the property of the railroad corporations is not for the same purpose as that imposed upon the property throughout the state generally which enters into the average rate. It is a distinct and particular state tax devoted to a particular purpose. (120 Mich. 102.) This we have pointed out permits a diversity of rate and of incidents of taxation. It was for the legislature to impose upon this property such a rate as it deemed necessary and to arrive at that rate by any process which it chose. Its judgment in this respect is purely political. The matter was entirely one of discretion and complainant's only redress is through a change in the system brought about by the people.

(2.) A certain amount each year is required to pay expenses of the state, and its municipalities. The entire is made up of contributions from all classes of property. What is paid by one is not necessarily paid by another class, and the burden is the same in each class,—the general property paying the expenses of its local government, and its contribution to the state government, and the railroad property, its specific contribution to the specific fund provided, measured by what the general property has paid. The revenue derived

from act 173 serves to decrease the average rate through decreasing to that extent the amount necessary for the municipalities to raise for the support of the schools and this equalizes the burden.

(3.) The complainant objects to this system as fixing its tax rate by a reference to the payments made by the local municipalities for, what it terms, private, as opposed to governmental, purposes, and insists that as it derives no benefit from these expenditures for private purposes, its tax rate should not be affected in amount by the fact that disbursements for those purposes have been made.

It seems unnecessary to point out any benefit to the railroad corporation by these expenditures of the local municipalities, as we do not think that has any bearing upon the question. (*Thomas v. Gay*, 169 U. S. 280.) However, these disbursements do have a direct influence upon the railroad corporation and its business, and are fully as, if not more, beneficial to it as to the individual residing in the municipality:

(a) The distinction which complainant makes between governmental and private purposes in the several municipalities in the state does not apply when the question is considered from the standpoint of the authority of the state to subject the owner of property to taxation therefor. In either case the exaction is a tax. It is a tax which can only be exacted for the benefit of the whole public, and is private only in that it is under the direct supervision of the municipality imposing it, rather than the state itself.

See *Kelly v. Pittsburgh*, 104 U. S. 78.

(b) The prosperity of the railroad corporation, and the continuance, and increase of its traffic,

both passenger and freight, depend on the prosperity of the municipalities of the state, and the attractiveness of and advantages afforded by them.

(c) The railroad corporation is not limited in its business to the municipalities through which it runs. Its business comes from all parts of the state and all its different municipalities, through different avenues, by rail, water, and otherwise. The fact that the Chicago & Northwestern has no line of road in Detroit does not determine the question of whether or not it profits by the prosperity and advantages of the citizens of that city, or the improvements which it makes.

(d) The very elements of improvement to which complainant objects, namely,—boulevards, public parks, and the like, are of more advantage and value to the railroad corporation, whether located in its immediate vicinity, or at a distance, than to the citizens of Detroit, so far as the question of pecuniary return is concerned. They operate to stimulate the railroad company's passenger traffic, and affect the growth of the community in which located, which, of course, has a direct effect on the profits of the railroad company, and it is well known that railroad companies maintain parks and buildings very similar to those objected to and which affect their business in similar ways.

(e) As to the class of corporations created by act 173, the state is a distinct municipality, and the boundaries between the different townships and counties become unimportant and cannot affect the question in the slightest. Every railroad corporation in the state is properly subject, (in reaching the average rate to be applied to it), to all

of the taxes in the municipality in which it exists, i. e., in the state, in the same manner as a person owning property on one street of a large city is subject to taxation for improvements, and conditions which occur in other parts of the city and do not appear to directly affect him.

It was for the legislature to district the state as it was fit. The question of boundaries was for it alone to determine, as well as what conditions and taxes within the district should be permitted to influence and affect the rate applied to the railroad corporation.

Williams v. Eggelston, 170 U. S. 310, 311;

Forsyth v. Hammond, 166 U. S. 518.

(f) The problem presented to the legislature in suggesting amendments to the constitution, and to the people in adopting them, was not what one railroad in one particular part of the state should bear as a tax rate, but what would be a fair and equitable rate for all railroads of the state, taking into consideration the many municipalities in which the roads exist, and the discrepancy in rate which would result if each were taxed according to the rate of the municipalities through which it ran, or in which it had property. The discrepancies from such a system are pointed out (*post* 170), and its result would be to burden one railroad company for twice as much as another, when there is in fact no difference in the character of their property and no reason for a difference in rate. With this problem presented, the legislature was justified in selecting the average rate.

(4.) The fact that the burdens of taxation, as compared with the benefits, are unequally shared does not invalidate

the taxes. The state may apportion its taxes as it chooses and if property receives any benefit from disbursements, however small, it can be made to share equally in the taxation, though its property is not in the municipality, making the disbursements for which the tax is levied and though some other property has been more directly benefited.

Foster v. Pryor, 189 U. S. 325, 331;

Waggoner v. Evans, 170 U. S. 592;

Thomas v. Gay, 169 U. S. 264;

Kelly v. Pittsburgh, 104 U. S. 78.

In *Kelly v. Pittsburgh*, it was said:

"We are unable to see that the taxes levied on this property were not for a public use. Taxes for schools, for the support of the poor, for protection against fire, and for water-works, are the specific taxes found in the list complained of. We think it will not be denied by any one that these are public purposes in which the whole community have an interest, and for which, by common consent, property owners everywhere in this country are taxed.

There are items styled city tax and city buildings, which, in the absence of any explanation, we must suppose to be for the good government of the city, and for the construction of such buildings as are necessary for municipal purposes. Surely these are all public purposes; and the money so to be raised is for public use. No item of the tax assessed against the plaintiff in error is pointed out as intended for any other than a public use.

It may be true that he does not receive the same amount of benefit from some or any of these taxes as do citizens living in the heart of the city. It probably is true, from the evidence found in this record, that his tax bears a very unjust relation to the benefits received

as compared with its amount. But who can adjust with precise accuracy the amount which each individual in an organized civil community shall contribute to sustain it, or can insure in this respect absolute equality of burdens, and fairness in their distribution among those who must bear them?

We cannot say judicially that Kelley received no benefit from the city organization. These streets, if they do not penetrate his farm, lead to it. The water-works will probably reach him some day, and may be near enough to him now to serve him on some occasion. The schools may receive his children, and in this regard he can be in no worse condition than those living in the city who have no children, and yet who pay for the support of the schools. Every man in a county, a town, a city, or a state is deeply interested in the education of the children of the community, because his peace and quiet, his happiness and prosperity, are largely dependent upon the intelligence and moral training which it is the object of public schools to supply to the children of his neighbors and associates, if he has none himself." (104 U. S. 81, 82.)

(5.) The state has determined that the railroad corporations receive a protection and benefit from its laws equal in amount to the expenditures and taxes in the several municipalities for state, county, township, school and municipal purposes and equal to that received by other property throughout the state. This is conclusive upon this court.

French v. Barber Asphalt Co., 181 U. S. 341, 344;

Parsons v. Dist. of Columbia, 170 U. S. 45;

Chadwick v. Kelly, 187 U. S. 544.

**C.—Denial of the right of hearing upon the rate of taxation.**

(1.) By constitution and statute, the duty is imposed on the state board of assessors to ascertain and determine the average rate levied on property other than that subject to assessment by it, upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes. The state supreme court (*Board of Education v. State Board of Assessors*, 133 Mich. 116), has held this duty ministerial in character, to be performed by taking the aggregate assessments of such other property of the state on which ad valorem taxes were assessed as a divisor, and the aggregate ad valorem taxes assessed throughout the state for state, county, township, school and municipal purposes as a dividend, and pursuing a mathematical computation,—the resulting quotient being the average rate to be imposed on the property subject to assessment by a state board of assessors.

(2.) The power and right to determine a tax rate is political and governmental in character, to be exercised by the people themselves or their legally authorized representatives. In either case no notice to the persons affected by the rate is essential. (*Cooley on Taxation* (2d Ed.) 337, 443; *Wharton v. School Directors*, 42 Pa. St. 363, 364; *Spencer v. Merchant*, 125 U. S. 345, 353, 354.)

In this case, the rate has been fixed and determined by the people and the system is, in effect, the imposition of a specific rate upon property, assessed according to its cash value; and a hearing upon the computation to determine the rate is no more necessary than it would be in case a definite rate were to be imposed rather than an average rate.

The function which the board of assessors performs is a mere ministerial one, for the purpose of reducing to a cer-

tainty the rate fixed in the constitution. (*Morton, Bliss & Co. v. Comptroller*, 4 S. C. 474.) In the performance of this ministerial function, there is no necessity for a hearing or opportunity to be heard, as a hearing, granted to the persons affected by the rate, could not affect the result. That result must, in all instances, be the same, where the method pointed out by the statute is carried out.

*Hagar v. Reclamation District*, 111 U. S. 708, 709;

*Hoge v. Muscatine County*, 176 U. S. 280;

*Amery v. Keokuk*, 72 Iowa, 704;

*Gillette v. Denver*, 21 Fed. 824;

*Reclamation District v. Phillips*, 108 Cal. 314.

In *Hagar v. Reclamation District* (111 U. S. 709, 710), it was said:

"Of the different kinds of taxes which the State may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business) and generally, specific taxes on things or persons or occupations. In such cases the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold and he be thus deprived of his property. Yet there can be no question, that the proceeding is due process of law, as there is no inquiry into the weight of evidence, or other element of a judicial nature, and nothing could be changed by hearing the taxpayer. No right of his is, therefore, invaded. Thus, if the tax on animals be a fixed sum per head, or on articles a fixed sum per yard or bushel or gallon, there is nothing the owner can do which can affect the amount to be collected from him. So, if a person wishes a license to do business of a particular



kind or at a particular place, such as keeping a hotel or a restaurant, or selling liquors or cigars or clothes, he has only to pay the amount required by the law and go into the business. There is no need in such cases for notice or hearing. So, also, if taxes are imposed in the shape of licenses for privileges, such as those on foreign corporations for doing business in the State, or on domestic corporations for franchises, if the parties desire the privilege, they have only to pay the amount required. In such cases there is no necessity for notice or hearing. The amount of the tax would not be changed by it."

(3.) The legislature designated the class and the rate of taxation it shall bear; there is no apportionment among the members of the class and no opportunity of hearing upon the rate is required to be given; and full hearing has been accorded upon the assessments.

Spencer v. Merchant, 125 U. S. 353, 354;

Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 174;

Walston v. Nevin, 128 U. S. 582;

Paulsen v. Portland, 149 U. S. 39, 40;

Nottage v. Portland, 35 Ore. 553, 554;

Guthrie on 14th Amendment, 96.

In *Spencer v. Merchant* (125 U. S. 354), it was said: The "objection becomes a criticism upon the action of the legislature and the process by which it determined the amount to be raised and the property to be assessed. Unless by special permission, that is a hearing never granted in the process of taxation. The legislature determines expenditures and amounts to be raised for their payment, the whole discussion and all questions of prudence and propriety, and justice being confided to its jurisdiction. It may err, but the courts cannot review its discretion."

(4.) If the state board of assessors, in reaching this rate, pursues a wrong method or assumes an excess of authority, the property owner affected by such erroneous procurement of the rate is entitled to redress his or its grievances in the courts. (§ 14, *act* 173, 1901.) This satisfies all constitutional requirements.

McMillen v. Anderson, 95 U. S. 37;

Glidden v. Harrington, 189 U. S. 259, 260.

**D.—Does the constitutional provision and act 173 impose a higher rate on corporations affected by its provisions, than is imposed on other property, and if so what is the effect?**

(1.) It is not a fair inference from the terms of the constitutional provision and the act, or their administration, to assume that the effect will be a difference in rate, to the disadvantage of the corporations taxed thereunder, nor is it the fact. The act and constitutional provision are designed for, the express purpose of producing equality of burden and, subjecting the corporations, subject to act 173, to the same rate of taxation as is imposed upon other property, to such an extent as is possible; the average rate imposed on the other property is to be imposed on the property of these corporations.

The constitution provides that all property (that assessed by the state board of assessors and that locally assessed) shall be valued, for taxation purposes, at true cash value. The taxing system of the state attempts to place both classes of property on the basis of cash value, so far as valuation is concerned, and to secure this equality by processes of review, by the supervisory action of a state board, authorized and empowered to raise assessments to their cash value, and by penal statutes designed to secure strict performance of the official duty imposed. The system is capable of subjecting both classes to equality of burden, as fully as can any system of taxation that can be devised.

If inequality exists in any instance, it results from, and is induced by, the administration of the law—not by the law itself; against inequalities of this character, where the taxing system is designed to prevent discrimination and secure equality, the courts can afford no relief, and the fourteenth amendment offers no protection, unless the inequalities resulting from the administration of the statute are the result

of fraud, or its equivalent, or a concerted action on the part of the officers of the law to bring about discrimination.

That the inequality resulting from a system reasonably designed to secure equality of burden is without redress, is indicated by the late case of *Travelers' Life Ins. Co. v. Connecticut* (185 U. S. 364, 371). It was there said:

"This court has frequently held that mere inequality in the results of a state tax law is not sufficient to invalidate it."

And further, quoting from *Tappan v. Merchants' Nat. Bank* (19 Wall (86 U. S.) 490, 504),

"Absolute equality in taxation can never be attained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property. Railroads, banks, partnerships, manufacturing associations, telegraph companies, and each one of the numerous other agencies of business which the inventions of the age are constantly bringing into existence, require different machinery for the purposes of their taxation. The object should be to place the burden so that it will bear as nearly as possible equally upon all. For this purpose different systems, adjusted with reference to the valuation of different kinds of property, are adopted. The courts permit this."

Again, quoting from *State Railroad Tax Cases* (92 U. S. 575, 612), it is said:

"Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect."

And, from *Merchants & Mfgs. Nat. Bank v. Pennsylvania* (167 U. S. 461, 464) :

"This whole argument of a right under the Federal constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232."

*Elliott on Railroads*, § 775, 776.

*Atchison T. & S. P. R. Co. v. Matthews*, 174 U. S. 96.

(2.) That the rate, imposed upon the property of complainant, under act 173, is higher than that paid locally on property in the municipalities in which its property is located, is not sustained by the proof. In some instances it is higher, in others it is lower, as is indicated by the following table taken from pages 476, 477 of the record) :

Railroad.	Counties in which land owned.	Average rate.
Manitowish River	Alcona, Marquette	.03167+
Duluth, S. S. & Atl.	Alcona, Baraga, Chippewa, Gogebic, Houghton, Iron, Mackinac, Marquette, Ontonagon, Schoolcraft	.01479+
Chl. & N. W.	Alcona, Delta, Dickinson, Gogebic, Iron, Marquette, Menominee, Ontonagon	.03336+
M., St. P. & St. M.	Alcona, Chippewa, Delta, Mackinac, Menominee, Schoolcraft	.03855+
Chi. Mil. & St. P.	Baraga, Dickinson, Houghton, Iron, Marquette, Ontonagon, Delta, Menominee	.01395+
G. R. & I.	Alcona, Charlevoix, Emmet, Grand Traverse, Kalamazoo, Kalkaska, Kent, Mecosta, Montcalm, Ogemaw, Oshtemo, St. Joseph, Westford, Wisconsin, Cheboygan	.01554+
L. S. & M. S.	Alcona, Branch, Calhoun, Eaton, Hillsdale, Ingham, Jackson, Kalamazoo, Kent, Lenawee, Monroe, St. Joseph, Washtenaw, Wayne, Barry	.01639+
Pontiac, OZ. & No.	Huron, Lapeer, Oakland, Tuscola	.01277+
Ann Arbor	Benzie, Charlevoix, Clinton, Gratiot, Ionia, Livingston, Manistee, Montcalm, Monroe, Oceana, Shiawassee, Washtenaw, Westford	.01623+
Gogebic & Mont. River	Gogebic	.02655+
Lake Sup. & Ish.	Marquette	.03070+
Marquette & S. E.	Marquette	.02070+
Copper Range	Houghton, Ontonagon	.00858+
Escanaba & Lake Sup.	Delta, Dickinson, Marquette	.01746+
Wis. & Mich.	Menominee, Dickinson	.03467+
G. T. W.	Calhoun, Cass, Eaton, Genesee, Ingham, Kalamazoo, Lapeer, Shiawassee, St. Clair, St. Joseph	.01479+
D., G., H. & M.	Clinton, Genesee, Ionia, Kent, Oakland, Ottawa, Shiawassee, Wayne	.01732+
Mich. Air Line	Ingham, Jackson, Livingston, Macomb, Oakland	.01254+
T. Sag. & Mus.	Gratiot, Kent, Montcalm, Muskegon	.01540+
Ch. Sag. & Mack.	Bay, Shiawassee, Saginaw	.01452+
D. & M.	Alcona, Alpena, Arenac, Bay, Cheboygan, Ionia, Montmorency, Ogemaw, Otsego, Presque Isle	.03839+
Manistee & N. E.	Benzie, Grand Traverse, Leelanau, Manistee	.01887+
Mineral Range	Baraga, Houghton, Keweenaw, Ontonagon	.00805+
Chi. Det. & Can. G. T. Jct.	St. Clair	.01282+
St. Clair Tunnel Co.	St. Clair	.01282+
S. Ste. Marie Bridge Co.	Chippewa	.02560+
Pere Marquette	Alcona, Antrim, Bay, Benzie, Berrien, Charlevoix, Clare, Clinton, Eaton, Emmet, Gladwin, Grand Traverse, Gratiot, Huron, Ingham, Ionia, Lapeer, Ionia, Kalamazoo, Kent, Lake, Lapeer, Ionia, Kalamazoo, Kent, Lake, Lapeer, Ionia, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Otsego, Saginaw, Shiawassee, St. Clair, Tuscola, Van Buren, Washtenaw, Wayne	.01738+
Michigan Central	Barry, Bay, Berrien, Branch, Calhoun, Cass, Cheboygan, Clinton, Crawford, Eaton, Genesee, Gladwin, Ingham, Jackson, Kalamazoo, Kent, Lapeer, Macomb, Monroe, Oakland, Ogemaw, Otsego, Roscommon, Saginaw, Shiawassee, St. Joseph, Tuscola, Van Buren, Washtenaw, Wayne, Arenac	.01540+

This table indicates the necessity of separate classification of railroad companies and that their property could not with equality and justice be taxed with the general property of the state as that would bring about a greater discrimination than can possibly exist under the present system. The classification which has been made selects those properties which are alike and fixes the same burden upon them. It may not be the identical burden as is placed upon all other property, but it is eminently more fair than to place this property under the same system as property which is not of the same class and bring about a variation of rate between different railroad companies. In such a system there might be some ground of complaint in that the different railroad companies were taxed at different rates unless there was some reason for the distinction.

The tax at the rates in the municipalities in which the property of a railroad company exists would bring about very apparent differences in rate.

The Chicago & Northwestern would pay taxes at the rate of \$25.26.

The Minneapolis, St. Paul & Sault Ste. Marie, \$28.55.

The Lake Superior & Ishpeming, \$26.55.

The Sault Ste. Marie Bridge Co., \$25.89.

While the Duluth, South Shore & Atlantic would pay \$14.79.

The Chicago, Milwaukee & St. Paul, \$13.95.

The Michigan Air Line, \$12.54.

The St. Clair Tunnel Co., \$12.82.

Mineral Range, \$9.05.

Copper Range, \$8.58.

The variation of rate which occurs in the present system will occur from year to year and the rate in a particular municipality may be greater or less than the average rate in a given year. This, however, is no objection to the validity of

the system, under *Travellers' Life Ins. Co. v. Connecticut* (185 U. S. 369), where it was said:

"\* \* \* the mere fact that in a given year the actual workings of the system may result in a larger burden on the non-resident was properly held not to vitiate the system, for a different result might obtain in a succeeding year, the results varying with the calls made in different localities for local expenses."

The rate imposed under act 173, in 1902, was \$16.55329 per one thousand dollars of valuation, while the average of that imposed in the several municipalities in which property was assessed was, in case of the complainant \$15.40.

(3.) If act 173 makes a valid classification by selecting the railroad and other property subject thereto, for the purpose of applying to it a different rule of taxation than is applied to other property, there is no requirement that it impose the same rate on the property of both classes. This doctrine has been repeatedly affirmed.

*Magoun v. Illinois Trust & Sav. Bank*, 170 U. S. 283;

*Clark v. Titusville*, 184 U. S. 329;

*Bell's Gap, etc. R. R. Co. v. Pennsylvania*, 134 U. S. 232;

*Home Life Ins. Co. v. New York*, 134 U. S. 594.

In *Magoun v. Illinois Trust & Sav. Bank* (170 U. S. 283), the legislature of Illinois classified inheritances, with reference to their amount and the degree of relationship to the decedent, and imposed a graduated tax on the separate classes, ranging from one to six dollars for each one hundred dollars in value of the interest taken by the beneficiary. This imposition of different rates on the different classes created, was held valid and to violate no requirement of the fourteenth amendment.

In *Clark v. Titusville* (184 U. S. 329), a license tax imposed on merchants graduated according to the amount of



their sales, was held not to violate the equality clause of the fourteenth amendment,—although the result was to make persons in the different classes pay at different rates

In both the foregoing cases a graduated excise tax was sustained. They are simply referred to as sustaining the doctrine that different rates may be imposed on the different classes. We do not argue that a graduated rate dependent in amount upon the amount of property owned might be imposed upon property.

The extent of the power of the states was stated by Mr. Justice Lamar in *Pacific Express Company v. Seibert* (142 U. S. 339, 351), as follows:

“This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms.”

Brannon on 14th Amendment, pp. 340, 352;

Guthrie on 14th Amendment, pp. 128, 130, 131.

(4.) If, in the administration of the law, inequality results, the defect of administration does not invalidate the act itself; and it is only where officers charged with the administration of the law are moved by corrupt motives, that courts will give relief from illegal assessments.

Cummings v. National Bank, 101 U. S. 153, 161;

Central Railroad Co. v. State Board of Assessors, 48 N. J. L., 1, 7;

Dundee Mortgage & Investment Co. v. School Dist., 21 Fed. 151, 155, 156;

Wagoner v. Loomis, 37 Ohio St., 571, 578, 580;

Taylor, etc. v. Louisville & N. R. Co., 88 Fed. 350;

City of Muskegon v. Boyce, 123 Mich. 535.

**E.—The neglect to provide for equalization of the assessments of the property, taxed under act 173, does not violate the fourteenth amendment.**

(1.) The constitution (§ 13, *Art. XIV, as amended*), provides:

“In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a state board on all taxable property, *except that taxed under laws passed pursuant to section ten of this article.*”

Corporations taxed by act 173 are taxed under laws passed pursuant to section ten of article fourteen.

(2.) The system enacted is admirably designed to produce equality, result in uniformity, and prevent discrimination, and the neglect to provide for equalization of the property taxed under act 173 with other property does not result in a denial of equal protection of the laws.

The state constitution provides (§ 12, *Art. XIV*), that “all assessments hereafter authorized shall be on property at its cash value.” The provision is applicable alike to assessments made under act 173 and all other assessments throughout the state, and it has been emphasized, if possible, by provisions in both general tax law and act 173, to the same effect.

The system designed is that property throughout the state, other than that subject to assessment under act 173, will be assessed at cash value, and subjected to taxation at such rate as is necessary to be imposed for certain state, county and municipal purposes. The rate which has been levied upon these assessments throughout the state is then, by the state board of assessors (acting ministerially) reduced to an average rate, which is imposed on the property of railroads and other

corporations subject to assessment by act 173, which is assessed upon the same basis on which the other properties of the state were assessed, namely, at cash value. If any discrimination results, it is not the effect of the system, but of its administration. (*Dundee M. & T. I. Co. v. School Dist.*, 21 Federal 155; *Travellers' Life Ins. Co. v. Connecticut*, 185 U. S. 371.)

(3.) Is any right, to which the corporations subject to taxation under act 173 are entitled, denied by refusing this equalization while giving it to other property? The question is fully answered by what has been heretofore said in regard to classification. The Federal courts have amply sustained the proposition that railroad property may be made a separate class for purposes of taxation, and that it is possible for the state to subject the different classes to separate rules of assessment, review and equalization, to the imposition of different rates and to treat them by entirely different systems. This authority is illustrated by the cases, most of which have been previously referred to. These hold that railroad property may be differently distributed than other property, for purposes of taxation,<sup>2</sup> may be accorded but one hearing, while other property owners are given two or more;<sup>3</sup> may be reassessed without the re-assessment of other property;<sup>4</sup> may be subject to valuation on real estate every year, while other real estate is valued once in five years;<sup>5</sup> may be denied dis-

---

NOTE. <sup>2</sup> *State Railroad Tax Cases*, 92 U. S. 575; *Columbus, etc., R. R. Co. v. Wright*, 151 U. S. 470;

<sup>3</sup> *Pitts. C. C. & St. L. R. R. Co. v. Backus*, 154 U. S. 421; *Kentucky Railroad Tax Cases*, 115 U. S. 321;

<sup>4</sup> *Florida v. Reynolds*, 183 U. S. 480;

<sup>5</sup> *Chamberlain v. Walter*, 60 Fed. 788;

count, while it is given to property owners generally;<sup>1</sup> may be alone subjected to a tax to pay salaries of railroad commissioners;<sup>2</sup> may be taxed specifically, while other property is taxed on its value;<sup>3</sup> may be subject to assessment by a state board, while other property is assessed locally;<sup>4</sup> is not denied equal protection where opportunity to correct undervaluation of its property is not given as to the property of individuals.<sup>5</sup>

A question similar to the one here raised was presented, in *Cummings v. National Bank* (101 U. S., 153, 160, 161), and decided adversely to complainant's contention. There the constitution required all property to be taxed "according to its true value in money." The statute provided separate state boards of equalization for real estate, for railroad capital, and for bank shares, there being no state board to equalize personal property. The action of these several boards of equalization was final, and no superior was provided to equalize the several properties among themselves throughout the state. Objection was made that the system necessarily produced inequality of valuation and was therefore void. The court reviews and disposes of the objection in the following language :

"We thus see that one board of equalization has charge of the valuation of the real estate of the whole State once in every ten years, another has charge of

---

NOTE. <sup>1</sup> *Louisville & N. R. Co. v. Louisville*, 29 S. W. (Ky.) 865;

<sup>2</sup> *Charlotte, etc., R. Co. v. Gibbes*, 142 U. S. 386;

<sup>3</sup> *Northern Pac. R. Co. v. Barnes*, 2 N. D. 310, 395-397; *McHenry v. Alford*, 168 U. S. 651; *Central Iowa Railroad Co. v. Supervisors*, 67 Iowa, 199;

<sup>4</sup> *State Railroad Tax Cases*, 92 U. S., 575; *Pitts C. & St. L. R. R. Co. v. Backus*, 154 U. S. 421; *St. Louis, etc. R. R. Co. v. Worthen*, 52 Ark. 529;

<sup>5</sup> *New York v. Barker*, 179 U. S. 286.

the valuation of railroad property every year, and a third has charge of the valuation of shares of incorporated banks every year, and the amount fixed by these State boards is in every instance the final basis of taxing that species of property for State and county purposes.

We are asked to decide that, as to this final board of equalization of bank shares; whose function is to equalize the valuation of those shares, *as among themselves*, throughout the State, with no power to consider the valuation of real estate which comes before another board only once in ten years, or other personal property and invested capital which never comes before any State board, that its operations must necessarily produce inequality in valuation as it regards other property, and is therefore void, as in conflict with the State constitutional rule of uniformity, and with the third section of the same article of the Constitution, declaring 'that all property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals.'

But there are two reasons why we cannot so hold. First, it might be that in every instance the result would be the valuation of bank shares at a lower ratio in proportion to its real value than that of any other property, and therefore plaintiff would have no ground of complaint. And, secondly, what is more important, if these original valuations and equalizations are based always, as the Constitution requires, on the actual money value of the property assessed, the result, except as it might be affected by honest mistakes of judgment, would necessarily be equality and uniformity, so far as it is attainable. So that while it may be true that this system of submitting the different kinds of property subject to taxation to different boards of as-

sessors and equalizers, with no common superior to secure uniformity of the whole, may give opportunity for maladministration of the law and violation of the principle of uniformity of taxation and equality of burden, that is not the necessary result of these laws, or of any of them; and a law cannot be held unconstitutional because, while its just interpretation is consistent with the Constitution, it is unfaithfully administered by those who are charged with its execution. Their doings may be unlawful while the statute is valid." (101 U. S. 160, 161.)

Taylor v. Louisville & Nashville R. Co., 88 Fed. 350, 370;

Wagoner v. Loomis, 37 Ohio St. 571.

(4.) In this case, equalization is not essential or appropriate to be extended to the railroad property as it is given to other property, by reason of the different purposes, and methods, of taxation applied to each.

The equalization, accorded by the constitution, is not for the purpose of reconciling individual assessments, but to aid in the apportionment of the state tax in order that it may be equally distributed among the municipalities. By the system in vogue the state taxes are apportioned to the counties through equalization, and the state and county taxes to the township and the value at which these equalizations take place necessarily bear no relation to the cash value of the property. No tax is imposed upon the property of the railroad corporation, and other property simultaneously, and for that reason no apportionment among the classes further than that which takes place in the natural operation of the system is necessary. The only apportionment necessary takes place through the ascertainment of the average rate borne by one class and its imposition upon the other.

(5.) If in any case, inequality exists between the classes, it results from under or over assessment, in one or the other class, and with this condition equalization does not deal. These evils must be corrected by processes of review, and in the processes of review, the railroad property participates with the other property as in both classes the final judgment of whether cash value has been reached, is that of the same board.

(6.) The peculiarity of the Michigan system which dispenses with the propriety for equalization, is that one central board has charge of the assessments of the property of railroad corporations, and, also, of the final valuation of the general property. Whenever necessity for equalization exists it is created by a diversity of judgments in making assessments, but where the assessments are subject to one mind, equalization can not be essential.

(7.) Equalization is given as freely to the railroad property as to other property so far as it affects individual rights and individual assessments. In the township individual assessments are corrected and equalized by a township board of review, which stands in the same relation, so far as the property in the township is concerned, as the men constituting the board of state tax commissioners stand to the railroad property and to other property. If equalization in another form than given is required as between the railroad property and the general property, it is equally required in every township between the individual owners of property.

(8.) The only case where a taxpayer is entitled to equalization as a matter of right is in a case of fraud; when this exists the courts equalize; so, the right to equalization, if existing is not denied. If the assessments are not fraudulent their amount is the value of the property.

**F.—Objection that the rate is fixed without a legislative determination of the needs in any year of the community receiving the taxes or of the fund benefited.**

(1.) I do not perceive how the fourteenth amendment requires a legislative declaration of the needs of a particular year as a prerequisite to the validity of a tax. The state constitution contains no direct requirement of such declaration, and the fourteenth amendment was not intended to import into the taxing system of any state any rules other than those securing due process and equal protection of the laws.

There must be constitutional or legislative sanction for every tax. Here the constitution fixes the rate by reference to the average rate levied on other property. The effect is identical with the statement, of a rate by a percentage of assessed valuation, or of an aggregate amount to be raised.

That the state constitution does not require an expression of the needs of the fund benefited in any case, and particularly in the present, is evident: The tax rate is fixed by the constitution itself, and if a provision had previously been contained therein, requiring a declaration of the needs of the funds benefited in any year, that provision, so far as this particular tax is concerned, would be superseded, the provision fixing the tax rate, being of later enactment.

(2.) The constitutional provision in question contains the equivalent of a declaration that the amount of tax to be derived under act 173 will, with the other resources of the state, be adequate to the needs of the state government and the educational funds benefited thereby. This is in the declaration that the average rate imposed on property subject to ad valorem assessment for state, county, township, school and municipal purposes shall be imposed on the corporations subject to assessment by the state board of assessors.



By the constitutional amendment and statute, it is decreed that a certain rate of taxation, to be reduced to certainty by the action of the state board of assessors, pursuing a mathematical calculation, based on ascertained data, shall be imposed on the corporations taxed. This is a declaration that the amount of taxes realized from the imposition of that rate will be required for the use of the government in carrying out the purposes for which the tax is imposed.

It is a fundamental principle that all power not confided to the national government, remains in the people, and it is a necessary sequence that a constitutional provision fixing a tax rate is as complete a declaration of the needs of any year as could be made by the legislature, if such a declaration be requisite.

The fixing of tax rates by the constitution is recognized by Judge Cooley who says (*Taxation* 2d. Ed. 324), in speaking of the authority for the levy of the tax:

"The authority may come from the constitution, which, in exceptional cases, will provide for the levy of a specific tax, or for a tax for some defined purpose."

(3.) Neither state or Federal constitution requires a specified sum to be designated to be levied for a particular purpose, and the declaration here of the needs of the government is simply the application, with slight modification, of a system of determining the amount of tax to be raised, in vogue in this state for many years. Railroad and other corporations have always been subject with constitutional sanction, to specific taxation in this state. In imposing taxes of that character on railroads, the statute has provided that a certain rate per cent should be imposed upon the gross earnings for a particular year, and the amount to be realized on the application of such a rate has never been such as could be reduced to an exact certainty, but has always been a matter

of approximation, varying with the earnings of the several years. If the instance before us does not constitute a determination of the needs of the government, then the imposition of specific taxes has never constituted such a declaration.

It has also been the policy and practice of the state (and statutes to that effect are at present on its statute books), to require a certain specified rate to be imposed and collected for the benefit of certain funds; thus, there is the one mill tax for the benefit of the primary school interest fund; the one-quarter mill tax for the benefit of the university; the one-sixth mill tax which was for the benefit of the war loan sinking fund; and the military tax, of a certain number of cents per capita, to be spread upon property. If, in the instance before us, there is no declaration of the needs of the government, and such a declaration is required, each of these statutes must fall with that we are considering.

In *Morton, Bliss & Co. v. Comptroller General* (4 S. C. 430, 475), it was said:

"Since 1869, the legislature has given the rate to be levied instead of fixing a gross sum to be raised, as was done in the last mentioned year. The consequence is that in the ascertainment of the rate for the various tax levies since 1869, the legislature was compelled to assume, approximately, the aggregate value of taxable property from data afforded by preceding years, inasmuch as the basis of the tax ordered could, under the tax laws, be ascertained only as the result of an assessment that was to take place subsequent to the enactment fixing the rate. If the legislature had deemed it most convenient to indicate the sum to be raised, and left it to the executive officer to ascertain the rate after the assessment was completed and the aggregate value of taxable property known, as was done in 1869, there is no good reason why they should have been

precluded from so doing, unless, as respondent says, the Constitution forbids it. The nicest scrutiny of the Constitution fails to discover any clause or expression looking towards any such result. That instrument is absolutely silent on the subject in question. If such a construction arises at all, it must be from all or some of the sections of the statute already quoted, while there is not in them the least ground for such a construction. The legislature possesses full authority to resort to either mode of arriving at the result, as they may judge most expedient."

(4.) Our constitution has always provided for the imposition of a certain rate per cent on such interests as might be designated by the legislature, in the provision authorizing the state to continue to collect and provide for the collection of specific taxes.

The constitution has also provided for an annual tax to pay the estimated expenses of the state government; but says that in the imposition of such tax the other resources of the government must be taken into consideration. (§ 1, *Art XIV.*) The specific tax and the tax before us are instances of the "other resources of the state."

(5.) *Taxation of railway companies by the "average rate" is not novel or confined to Michigan.*

In New Hampshire the statute for the "Taxation of Railroads and Telegraph and Telephone Lines" provides:

"Every railroad corporation in this state, not exempted from taxation, shall pay to the state an annual tax upon the actual value of its road, rolling stock and equipments on the first day of April of each year, at a rate as

nearly equal as may be to the average rate of taxation at that time upon other property throughout the state."

§ 1, Chapter 64, Public Statutes and Session Laws of New Hampshire, in force January 1st, 1901.

See also:

Revised Laws of Mass. (1902) Vol. 1, Chap. 12, Sec. 93, p. 227; Chap. 14, Secs. 37-40, pp. 266-268 incl.;

Revised Statutes of Missouri (1899) Vol. II, pp. 2175, 2176, Secs. 9363, 9364;

Laws of Wisconsin (1903) Chap. 315, Secs. 7 to 14, inc., pp. 496, 7, 8 and 9.

See *Railroad v. The State*, 60 N. H. 87.

(b) The system in force in Missouri of imposing school taxes on railroads at the average rate of school taxes imposed in the several municipalities of the counties through which the road runs, furnishes an instance of the validity of the identical provision we are considering. The system has been in the statute at least thirty years and in a number of instances, declared not open to constitutional objection, either as measured by the state or Federal constitutions.

*State v. Mo. Pac. R. R. Co.*, 92 Mo. 137;

*Chicago & Alton R. R. v. Lamkin*, 97 Mo. 496;

*Matter of Apportionment of Taxes*, 78 Mo. 595;

*State v. M. S. Ry. Co.*, 161 Mo. 199.

(c) This is not the first imposition of an average rate in Michigan. Such a rate was imposed in statutes of 1899 (*act 19*) and 1881 (*act 168*),

both invalid for other reasons. It is significant that the supreme court of the state, in the only case in which the statute and constitutional provisions involved in this case have been before it, said:

"We, however, entertain no doubt that under the construction we have placed upon this provision, the legislature was well within the limits of its authority."

Board of Education v. State Board of Assessors, 133 Mich. 116, 121.

(6.) No claim is made that the taxes imposed on the class to which complainant's property belongs, was in excess of the needs of the government, or of the fund to which devoted. Though the requirement be that the tax levied must not exceed the needs of the purposes of government to which to be devoted, and a levy in excess of such needs, would furnish a ground of complaint, still the presumption would be that the tax raised did not exceed the needs of the purpose or fund to which to be devoted, which could only be overcome by pertinent and strong evidence. There has been no attempt at such a showing in this case, and there is, therefore, no injury to complainant in this regard of which it can complain.

(7.) If the objection be that the needs of the community are taken into account in taxation generally, but not as applied to the complainant, the answer is:

(a) That this element is as fully taken into account in fixing complainant's taxes as in fixing other taxes.

(b) That there are many instances of, and it has always been the practice in Michigan to subject property to taxation at continuing rates

voted in one year and applicable until repealed.  
(*Ante p. 92, 181.*)

(c) Railroad property forms a different class, and it would be permissible to apply different rules to it in this respect than are applied to other property.

(d) If a difference exists, it is one of form and not of substance, and of such a character that it might properly be made in the exercise of the right to amend corporate charters.

**G.—Violation of the fourteenth amendment in that act 173 does not state the tax or its object while all other tax laws are required to “distinctly state the tax.”**

This assignment is in substance that act 173 does not state the tax or its object and that therefore discrimination results. In does not go to the extent of claiming that act 173 was required by the provision of the state constitution to state the tax.

We consider

- (1.) Was ~~it~~ necessary for this statute to state the tax or its object?
- (2.) Does it do so?
- (3.) Whether if it does not state the tax the fourteenth amendment is violated?

Section 14 of article XIV of the Michigan constitution provides:

“Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.”

(1.) *The necessity for act 173 to state the tax and its object.*

(a) *The tax.* In this case, section 14 of article XIV does <sup>not</sup> apply, for the reason that the tax is, in reality, fixed in the constitution itself. (Sec. 11, Art. XIV.)

It was not within the legislative province to add to or vary the constitutional statement of the tax, and when it selected the subjects of taxation by a state board of assessors, the tax was required to be such as, and to be imposed on the subjects, stated in the constitution.

The provision requiring a tax law to state distinctly the tax and its object does not apply uniformly to all taxes but only to those recurring annually and those imposed generally upon the entire property of the state.

*Matter of McPherson*, 104 N. Y. 306, 318;  
*People v. Fire Assn. of Phil.*, 92 N. Y. 311,  
 327;

*Jones v. Chamberlain*, 109 N. Y., 100;  
*Ford's Petition*, 6 Lans. (N. Y.) 97;  
*Guest v. Brooklin*, 8 Hun. (N. Y.) 97.

In *Matter of McPherson* (104 N. Y. 319), it was said:

"The object of the constitutional provision was to convey information to the members of the legislature and to the people, and it should have a practical construction, with a view to accomplish its purpose as far as attainable and to carry out the policy which we may assume dictated it.

The tax imposed by this act is a permanent one. It is always uncertain upon whom it will fall and how much revenue it will produce. It would have been impossible for the legislature, perhaps years in advance, to specify the particular objects to which the tax should be applied, and we are of opinion that this section of the constitution was intended to apply to the annual recurring taxes known at the time of the adoption of the constitution and imposed generally upon the entire property of the state."

(b) *The object.* The requirement that a law imposing a tax shall state the object does not apply



in this case, as the constitution (§ 1 art. XIV), unalterably fixes the object.

Walcott v. People, 17 Mich. 68;

Union Trust Co. v. Wayne Probate Judge,  
125 Mich. 487;

Pingree v. Auditor General, 120 Mich. 108,  
109,—Opinion Grant, J.

In *Walcott v. People*, it was said:

“Section 14 was not intended to apply to cases in which the object of the tax should be found distinctly and unalterably fixed by the constitution itself.”

(2.) *Does act 173 state the tax or its object.*

(a) By the requirement that the tax shall be distinctly stated, we must assume it was intended that the tax imposed be stated with sufficient definiteness to permit its being made certain. This is all the constitution requires, whether the statement be of a rate, a gross amount, or a duty imposed on some officer or body, acting within his or its legitimate jurisdiction, to fix the amount.

People v. Mahaney, 13 Mich. 499;

Union Trust Co. v. Wayne Probate Judge,  
125 Mich. 494;

Trowbridge v. City of Detroit, 99 Mich. 443;

People v. Supervisors of Orange, 17 N. Y.  
238;

Commonwealth v. Brown (Iverson Brown's  
Case), 91 Va. 762, 777.

(b) *The Tax.* The legislature, has, in act 173, practically reiterated the statement of the tax as made in the constitution. In section 12 of that act, the state board of assessors is required to

ascertain the average rate, and in section 13 it is provided, "Said board shall tax the property of the several companies as assessed by it, at the rate as determined by it." The constitution fixes the rate, which is fixing the tax, and the legislature and the board of assessors, acting under its direction, simply provide the means, and perform the ministerial duty, of reducing that rate of tax to certainty.

*Iverson Broten's Case* (91 Va. 778) disposing of a question similar to that here presented, arising under a constitutional provision identical with ours, is of interest on this proposition. The court said:

"It is true that the act contains a tax. Is it distinctly stated? It is prescribed to be 'an amount equal to the amount of tax that may be levied by the state on any other species of property.' It is made exactly the same as that which is imposed on other property. Tongmen are required to pay the same tax on the fair value of the oysters taken and sold by them that is paid by others on other property of the same value. The tax is accurately prescribed. It is not open to mistake or doubt. It is, in the sense of the constitution, distinctly stated. The act specifically and definitely fixes the amount of the tax, and in this respect complies with the letter and purpose of the constitutional provision."

In *People v. Mahaney* (13 Mich. 499), a provision which provided an annual tax of varying amounts dependent upon the estimate of certain officers, was held to distinctly state the tax; the court said:

"It was impossible that the amount should be fixed in advance; and there is nothing in the language employed in this section of the constitution which warrants us in holding that every law providing for a tax is invalid, unless it limits in amount the sum to be levied."

In *Troubridge v. City of Detroit* (99 Mich. 443), the amount of the tax was only determined after a reference to a jury to determine the amount to be raised, and it was held that the statute stated the tax.

There is in the statement of the average rate the statement of a distinct tax. The provision for the average rate made certain the amount to be levied. There is no reference to any other law or to the discretion of any person or officer and still the tax can be made certain in amount; the necessary conclusion is that it is fixed by the only body which had any discretion in regard to it—the people—; a computation is necessary to reach a rate in figures but that is also the case where a tax of a certain sum is levied. There would be no claim in such a case that the tax is fixed by the officers performing the ministerial computation. It certainly is not fixed or stated by local officers, as they have no duty to perform or direct influence in regard to it.

Complainant's counsel refer at length to the case of *People v. Supervisors of King's County* (52 N. Y. 556, 566), as bearing upon this question and holding that § 14 of article XIV was designed for the protection of the public, in which it is opposed to *Westinghausen v. People* (44 Mich. 265).

The New York case is distinguished from this as in that case the statute expressly made the tax rate discretionary with certain administrative officers. Counsel also points out that the Michigan constitutional provision requiring the statement of the tax and its object was adopted from the New York constitution, though it is doubtful if the statement can be said to be strictly true, as the constitutions of many of the states and some existing prior to the adoption of this provision by Michigan contain the identical provision.

Counsel is also responsible for the statement that with the adoption of the New York constitutional provision was taken the construction of the New York courts in the case referred to. It may be noted that this decision was rendered 23 years after the adoption of the Michigan constitution and that the rule is that subsequent constructions are not adopted with the statute of another state.

(c) *The object.* Act 173 specifically states the object of the tax. Section 16, after providing that the taxes shall be applied as required by the constitution, further provides:

"That if any of the corporations, companies or associations herein named were not paying specific taxes to this state on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the state."

It is significant that all corporations taxed under act 173 belong to classes paying specific taxes under the laws in force on November 6th, 1900.

It has been held that a statement of the fund to be benefited is a sufficient statement of the object, though the fund be general in nature.

*Westinghausen v. People*, 44 Mich. 267;

*People v. Mahaney*, 13 Mich. 499;

*People v. Supervisors of Orange*, 17 N. Y. 235;

*People v. National Fire Ins. Co.*, 27 Barb. (N. Y.) 188;

*Cooley on Taxation* (3d Ed.) 551.

In *Westinghausen v. People* (44 Mich. 267), the taxes at issue were required to be placed to the credit of the contingent fund of the municipality in which collected. This was objected to as not being a sufficient specification of the object of the tax. The court, in disposing of the question, says of section 14 of article XIV:

"Its intent is manifest, to prevent the legislature from being deceived in regard to any measure for levying taxes, and from furnishing money that might by some indirection be used for objects not approved by the legislature. \* \* \* It must receive a reasonable construction to carry out its design. The statute in question does not, we think, violate that design. \* \* \* We can see no reason why the increase of the contingent fund of a corporation is not a specific object. \* \* \* There is no uncertainty in a provision which names the classes of beneficiaries, and devotes the taxes to their use in a fund which is perfectly understood by everyone as devoted to non-specified purposes, some of which could not be readily foreseen. If this objection is

good it would be difficult to understand why a city charter allowing money to be paid into a contingent fund, would not come within similar difficulties. A nice objector might say that paying money over to a city or township for general purposes would be uncertain. We must treat these provisions sensibly, and not hypercritically; and when the purpose is named and unmistakable, and it is impossible for the legislature to be misled concerning it, no other practical requirement can be found."

In *People v. Supervisors of Orange* (17 N. Y. 235), a tax was imposed which, when collected, was required "to be paid into the treasury of the state to the credit of the general fund." This was held to be a sufficient designation of the object.

(3.) *The fourteenth amendment is not violated, for the reasons:*

(a) That act 173 as fully and completely states the tax and its object as it is required to be stated in any tax law, whether imposing a specific or property tax, and whether upon property of corporations or individuals.

(b) That if the corporations enumerated in and taxed under act 173 are proper subjects of classification, it is permissible to apply different rules to them, and the Federal constitution would not be violated by a requirement that a tax law state the tax and its object, when imposed upon other persons or corporations, when no such requirement existed in regard to the corporations enumerated in act 173, and proper subjects of different classification.

(c) The complainant's taxes are fixed in the constitution; all other taxes are fixed by the legislatures. Reasons might and do exist why it would be essential to state the tax in the one and not in the other case. This justifies the difference, if it is permissible to tax the property of the railroad by the constitution, while other property is taxed by statute, which will not be denied.

(d) In New York one class of statutes is required to state the tax and its object, another class is not required to do so. (*Ante p.* 187.) This has never been thought a violation of the fourteenth amendment. On the contrary, the inheritance tax statute of the state which was passed upon in the case of *Matter of McPherson* (104 N. Y. 306, 318) and there held not required to state the tax or its object has been repeatedly held valid. If a violation of the fourteenth amendment could be found in the Michigan system, in that act 173 does not state the tax or its object while other taxing statutes are required to do so, the system approved in New York is clearly open to attack.

H. Under the system of taxation complained of, the same rate is applied to all railroad property regardless of location. This is objected to as the tax rates in the several municipalities in which the different railroad companies have property are different. We do not believe that this objection can be seriously made, or is entitled to serious consideration. It goes without saying that, as compared with each other, railroad corporations and their property may be made a single class in the legislative discretion, regardless of what may be the result of the comparison of their property with that of others.

We deem it unnecessary to say anything further than that railroad companies may be treated as a single class, or may be for different purposes separated into distinct classes based upon elements of differences such as the amount of their earnings, the locality in which they exist, the length of their lines, etc. (*Ante p. 114.*)



## FIFTH.

**The constitutional provision and statute do not deprive of property without due process of law.**

## I.

*What due process requires.* The requirements of due process are expressed in *Hagar v. Reclamation District* (111 U. S. 708), as follows:

"It is sufficient to observe here that by 'due process' is meant one, which following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary, for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means therefore, there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

As applied to matters of general taxation, it has been uniformly held that any system which gives to the party taxed any means of questioning the validity or amount of the tax at some stage of the proceeding, either before it is determined and fixed, or to contest subsequent proceedings for its collection, is due process.

Brannon on Fourteenth Amendment, 349, 350, 351;  
*State Railroad Tax Cases*, 92 U. S. 575, 610;  
*McMillen v. Anderson*, 95 U. S. 37;  
*Winona, etc. Land Co. v. Minnesota*, 159 U. S. 537;  
*Pittsburgh C. C. & St. L. Ry. v. Board of Public Works*, 172 U. S. 45;

Weyerhaeuser v. Minnesota, 176 U. S. 556, 557;  
 French v. Barber Asphalt Co., 181 U. S. 324;  
 Voigt v. Detroit, 184 U. S. 122;  
 King v. Portland City, 184 U. S. 69, 70;  
 Turpin v. Lemon, 187 U. S. 58;  
 Glidden v. Harrington, 189 U. S. 239, 260.

A state statute for raising public revenue by the assessment and collection of taxes, which gives notice of the proposed assessment to an owner of property to be affected, by requiring him, at a time named, to present a statement of his property, with his estimate of its value, to a designated official charged with the duty of receiving the statement; which fixes time and place for public sessions of other officials, at which this statement and estimate are to be considered, where the official valuation is to be made, and when and where the party interested has the right to be present and to be heard; and which affords opportunity, in a suit at law for the collection of the tax, to judicially contest the validity of the proceeding, does not necessarily deprive of property without "due process of law," within the meaning of the fourteenth amendment.

Kentucky Railroad Tax Cases, 115 U. S. 321.

In *Glidden v. Harrington* (189 U. S. 258), it was said of general taxes upon personal property:

"Although with respect to this class of taxes we have never had occasion to determine exactly what the fourteenth amendment required, we have held that the proceedings should be construed with the utmost liberality  
 \* \* \* It is only where the proceedings are arbitrary, oppressive or unjust that they are declared to be not due process of law."

In *Leigh v. Green* (193 U. S. 88) quoting with approval language used in *Davidson v. New Orleans* (96 U. S. 97), it was said:

"That whenever by the laws of a state, or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections. \* \* \* The state has a right to adopt its own method of collecting its taxes, which can only be interfered with by Federal authority when necessary for the protection of rights guaranteed by the Federal constitution."

In *Turpin v. Lemon* (187 U. S. 57), it was said:

"It would appear that the fourteenth amendment would be satisfied by showing that the usual course prescribed by the state laws required notice to the taxpayer and was in conformity with natural justice. Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court, although we have had frequent occasion to hold that, in proceedings for the condemnation of land under the laws of eminent domain, or for the imposition of special taxes for local improvements, notice to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential. *Spencer v. Merchant*, 125 U. S. 345; *Huling v. Kay Valley Railway*, 130 U. S. 559; *Hagar v. Reclamation District*, 111 U. S. 701; *Paulsen v. Portland*, 149 U. S. 30. But laws for the assessment and col-

lection of general taxes stand upon a somewhat different footing and are construed with the utmost liberality, sometimes even to the extent of holding that no notice whatever is necessary.

It was not the intention of the Fourteenth Amendment to subvert the systems of the states pertaining to general and special taxation; that amendment legitimately operates to extend to the citizens and residents of the states the same protection against arbitrary state legislation affecting life, liberty, and property, as is afforded by the fifth amendment against similar legislation by congress; and the federal courts ought not to interfere when what is complained of is the enforcement of the settled laws of the state, applicable to all persons in like circumstances and conditions, but only when there is some abuse of law, amounting to confiscation of property or deprivation of personal rights."

*French v. Barber Asphalt Paving Co.*, 181 U. S. 324;

*Cass Farm Co. v. Detroit*, 181 U. S. 396;

*Tonawanda v. Lyon*, 181 U. S. 389;

*Detroit v. Parker*, 181 U. S. 399.

The notice and opportunity for hearing is sufficient if given, at some stage of the proceeding; thus, it has been held that, a hearing, prior to assessment, at the time of the assessment, or subsequent to the assessment before a board of review or equalization, satisfies the requirement; and that where no opportunity for hearing is afforded, except in contesting proceedings for the enforcement of the tax in the courts, the constitutional requirement is sufficiently complied with, and this notice is sufficiently given and due process of law, so far as notice is concerned, is satisfied, where the statute, as in this case, prescribes the time and place of the sittings of the board.

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 426;  
 Winona, etc. Land Co. v. Minnesota, 159 U. S. 526;  
 State Railroad Tax Cases, 92 U. S. 575;  
 Hagar v. Reclamation District, 111 U. S. 710;  
 McMillen v. Anderson, 95 U. S. 37;  
 Weyerhauser v. Minnesota, 176 U. S. 556, 557;  
 Lander v. Mercantile Bank, 186 U. S. 458;  
 Merchants' & Mfgs. Nat. Bank v. Penn., 167 U. S. 467;  
 Cooley on Taxation (3d Ed.), 630, 631, and cases.

## II.

*What is accorded by this act.* The statute in question fully observes all of the rights of the corporations taxed thereunder; it gives the necessary opportunity for, and due notice of, hearing; by it, the several corporations taxed are permitted to make reports of the character, description and value of their property and assessment is then made by the board of assessors, based on such reports and such other facts as may come or be brought to its knowledge; after completion of the assessment, provision is made for review and hearing thereon by section 10, which is in part:

"On the third Monday of December in each year, it shall be the duty of the state board of assessors to meet at the state capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said state board of assessors may, on

such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal."

### III.

*The specific reasons assigned by complainant why the act in question deprives it of property without due process of law.*

A. That under it, the complainant's taxes are not imposed by a representative legislature, but by local officers of municipalities who do not represent the complainant as to its property beyond the jurisdiction of such officers. The answers to this objection are:—

(1.) Complainant's counsel proceeds upon a wrong premise. He assumes that the rate is not legislative or constitutional, but is fixed by local officers of the several municipalities. In fact, the rate is not fixed by the officers to whom he attributes authority over it.

(2.) The rate is in fact fixed in the constitution by the people, and the complainant and its property have had full representation and hearing (*see argument Ante p. 162*). The representation and hearing is as full as is accorded upon the rate in any case of a tax rate fixed, or tax imposed, by legislature or constitution. The action is that of the state itself as distinguished from its representatives and when the state, through the people who constitute it, acts, every person, entity, and interest, and all property have been represented. The corporation could not vote, it is true, but the right of suffrage is not essential to the validity of taxing statutes—otherwise how could the property of women, corporations, non-residents, or infants be taxed?

Cooley on Taxation (3d Ed.) 96;

Thomas v. Gay, 169 U. S. 264, 275;  
 Wheeler v. Wall, 6 Allen (Mass.) 558;  
 Smith v. Macon, 20 Ark. 17.

(3.) The local officers of the municipalities of the state having duties to perform with regard to taxation, might be made a board to fix the taxes of corporations taxed in the state as a single district. It is, however, unnecessary to advance this theory or to discuss it, as the rate is clearly fixed by the legislature and constitution.

(4.) If the objection be that this is taxation without representation in violation of a republican form of government, and that thus deprivation of property without due process of law is effected, the answer (in addition to what has been stated in regard to the rate being legislative and constitutional) is:

The constitutional provision is:

"The United States shall *guarantee to every state in this Union* a republican form of government and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."  
 (§ 4, Art. IV, *Federal constitution*.)

(a) This article was designed to secure the maintenance of government in the several states in such general form as it existed in the original states at the time of the adoption of the constitution, (*Story on Constitution*, 5th Ed.; § 1814; *Minor v. Happersett*, 88 U. S. 162, 175), still, there is little beyond this to indicate what constitutes the republican form of government guaranteed. As said by Judge Cooley:

"The principles of republican government are not a set of inflexible rules, vital and active in the constitution, though unexpressed, but they are subject to variation and modification from motives of policy and public necessity; and it is only in those particulars in which experience has demonstrated any departure from the settled practice to work injustice or confusion, that we shall discover an incorporation of them in the constitution in such form as to make them definite rules of action under all circumstances." *Cooley Constitutional Limitations* (7th Ed.) 238.

In *Minor v. Happersett*, (88 U. S. 162, 175), it is said:

"The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended. The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is, therefore, to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of



what was republican in form, within the meaning of that term as employed in the Constitution."

(b) It may be regarded as settled, that the guaranty was not included to guard rights or interests of particular citizens or individuals, but is a guaranty to the states, as states. The whole article concerns the character of the government secured to the states by the Federal government and not the duty or obligation of the state, or Federal government to any particular individual, set of individuals, or property interests.

In the history (*Documentary History, Con. of United States*, pp. 19, 64, 108, 123, 370, 371, 322, 456, 651, 652, 732) of the adoption of this article of the constitution, there is no word to indicate that any private right or interest was to be secured thereby, but all the proceedings indicate its purpose to be to secure the maintenance of the state government in such certain form, as regarded necessary to the continuance of the Union. This was deemed to be the purpose of the provision by Judge Cooley (*Con. Lim. (7th Ed.)* 45), and he says:

"The purpose of these is to protect a Union founded on republican principles, and composed entirely of republican members, against aristocratic and monarchical innovations."  
(*Kadderly v. Portland*, 74 Pac. 710, 719.)

This idea is indicated by Mr. Madison's contributions to the *Federalist*, who is quoted by Story (*Story on Con. (5th Ed.)* § 1815), as having said:

"In a confederacy founded on republican principles and composed of republican members, the superintending government ought

clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other and the greater right to insist that the forms of government under which the compact was entered into should be substantially maintained.

The word 'guarantee' does not mean to form, to establish, to create; it means to warrant, to secure, to protect the state, that is the body politic, in its right to have a republican form of government. It defends the people against the interference of any foreign power, or of any intestine conspiracy against its right as a body politic to establish for itself, republican forms of government" (*Tucker on Con.*, p. 638.)

That the article concerns the relations between state and nation, rather than being a guaranty of private rights is indicated by *Texas v. White* (74 U. S., 700, 720, 721), where it is said:

"It [*the word 'state'*] describes sometimes a people or community of individuals, united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country or territorial region inhabited by such a community; not infrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory and government. It is not difficult to see that in all these senses the

primary conception is that of a people or community. The people, in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government, or united by looser and less definite relations, constitute the state. This is undoubtedly the fundamental idea upon which the republican institutions of our own country are established. \* \* \* There are instances in which the principal sense of the words seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government. In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every state in the Union a republican form of government, and shall protect each of them against invasion. In this clause a plain distinction is made between a state and the government of a state."

The Federal government is bound to secure to the state a republican form of government, the state is bound to the United States to furnish that government, and it is not for particular individuals or, property interests to object that the form of government furnished by the one and approved by the other, is not republican in nature, because of some particular provision of the state's statutes, which does not affect its system of government as a whole. If the nature of the government is republican and conforms in general to the principles of government of the original states, or is recognized by the Federal government, this article cannot be made a ground of attack on a particular law or set

of laws. In other words, the ground of objection must be found in some other provision of the constitution.

"The courts are not at liberty to declare statutes void because of their apparent injustice or impolicy, neither can they do so because they appear to the minds of the judges to violate fundamental principles of republican government, unless it shall be found that those principles are placed beyond legislative encroachment by the constitution. (*Cooley's Con. Lim.*, (7th Ed.) 237, 238.)

(c) Questions of whether a government exists or is republican in form are not properly presented to the judiciary. The nature of the thing attempted to be secured, the means, methods and action and judgment for securing it are political in character, to be determined by Congress and not the courts.

*Luther v. Borden*, 7 How. 39, 42, 47, 57;

*Texas v. White*, 74 U. S. 700, 730;

*White v. Hart*, 13 Wall. 649, 652;

*Tucker on the Con.*, p. 637, 638;

*Story on the Con.* (*Cooley's note*), p. 593, 5th Ed.;

*Cooley on Con. Lim.*, (7th Ed.) pp. 237, 238.

In *Tucker on the Constitution* (pp. 637-8), it is said:

"The law, therefore, necessary and proper to guarantee a republican form of government must be passed by Congress to carry into execution this duty reposed in the United States. The words 'to guarantee to every State in this Union a republican form of government,

obviously discriminate the State as a Body-politic from its government, whose form must be republican. \* \* \* If Congress must guarantee, must it not determine when the occasion arises for its exercise?"

In *Texas v. White* (74 U. S. 700, 730), it is said:

"But the power to carry into effect the clause of guaranty is primarily a legislative power and resides in Congress. 'Under the fourth article of the Constitution, it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State, before it can determine whether it is republican or not.'"

**B.** The objection is also that due process is denied in that no hearing is given upon the rate of taxation. No hearing is necessary for the reasons:

(1.) That the rate is fixed in the constitution and by the legislature in the exercise of governmental powers.

*Spencer v. Merchant*, 125 U. S. 345;

*Hagar v. Reclamation District*, 111 U. S. 701;

*French v. Barber Asphalt Paving Co.*, 181 U. S. 341-344.

*Williams v. Eggleston*, 170 U. S. 311;

*Parsons v. District of Columbia*, 170 U. S. 45-50;

*Paulsen v. Portland*, 149 U. S. 39-40;

*Judson on Taxation*, § 377 et seq., p. 467.

In *Spencer v. Merchant* (125 U. S. 345, 352, 354, 355), it was said:

"The act of 1881 determines absolutely and conclu-

sively the amount of tax to be raised, and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the legislature, whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. *Litchfield v. Vernon*, 41 N. Y. 123, 141; *People v. Brooklyn*, 4 N. Y. 427; *People v. Flagg*, 46 N. Y. 405; *Horn v. New Lots*, 83 N. Y. 100; *Cooley on Taxation*, 450. The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it is not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review. \* \* \* These views furnish also an answer to the objection that the only hearing given to the land-owner relates to the apportionment of the fixed amount among the lots assessed, and none is given as to the aggregate to be collected. No hearing would open the discretion of the legislature, or be of any avail to review or change it. A hearing is given by the act as to the apportionment among the land-owners, which furnishes to them an opportunity to raise all pertinent and available questions, and dispute their liability, or its amount and extent. The precise wrong of which complaint is made appears to be that the land-owners now assessed never had opportunity to be heard as to the original apportionment, and find themselves now practically bound by it as between their lots and those of the owners who paid. But that objection becomes a criticism upon the action of the legislature and the process by which it determined the amount to be raised and the property to be assessed. Unless by special permission, that is a hearing never granted in the process of taxation. The

*legislature determines expenditures and amounts to be raised for their payment, the whole discussion and all questions of prudence and propriety and justice being confided to its jurisdiction. It may err, but the courts cannot review its discretion. The power to tax belongs exclusively to the legislative branch of the government. United States v. New Orleans, 98 U. S. 381, 392; Mericether v. Garrett, 102 U. S. 472. In the words of Chief Justice Chase, condensing what had been said long before by Chief Justice Marshall, 'The judicial department cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected.'*

See *Spencer v. Merchant*, 100 N. Y. 585.

In *Hagar v. Reclamation District* (111 U. S. 709), it is said:

"Of the different kinds of taxes which the state may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), and generally, specific taxes on things, or persons, or occupations. In such cases the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold, and he be thus deprived of his property. Yet there can be no question, that the proceeding is due process of law."

It would not be contended that a hearing was required other than through the taxpayer's representation in the legislature, if the rate were a specified rate, or the tax were of a specified sum, and no different rule can be applied to this

case than is applied in those. The rate as fixed by the constitution and put into operation by the legislature, is definite and fixed, subject to the discretion of no officer or person, and needs but a mathematical computation based upon data furnished by the records of taxes paid by other property to render it certain.

(2.) In the determination of the average rate by the board of assessors, its duty is purely ministerial (133 Mich. 116), and as a hearing could not alter the result or affect the determination, it is not required. (*Cases Ante p. 163.*)

The error in complainant's argument, upon the denial to it of due process of law in that the rate is not fixed by representative legislature, and that it is denied the right of hearing thereon, arises from its mistaken conception of the source of the tax imposed. If, as it claims, the rate were fixed, affected by, and dependent upon the action of officers of local municipalities, the arguments which it advances might be entitled to serious consideration. The assumption of fact with which it starts, is, however, entirely unwarranted as the rate is clearly and undeniably fixed in the constitution and rendered effective by the legislature, and is not in any degree imposed, affected, or controlled by other officers.

(3.) The complainant has not averred or shown any injury to it from the application of this method. As a prerequisite to injunction to restrain the collection of taxes, complainant should make it clear that it ought not in equity to be asked to pay the taxes from which it asks relief.

*Mercantile National Bank v. Hubbard*, 98 Fed. 465, 469;

*Musselman v. Logansport*, 29 Ind. 533;

*Cowell v. Doub*, 12 Cal. 273;

*Anderson v. City of Mayfield*, 93 Ky. 230, 237, 238;

*Streight v. Durham*, 10 Okl. 361, 373; 61 Pac. 1096, 1100;



Dundy v. Richardson Co. Comrs., 8 Neb. 508, 519;  
 South Platte Land Co. v. Crete, 11 Neb. 344, 347;  
 Jones v. Summer, 27 Ind. 511;  
 Porter v. R. R. I. & St. L. R. Co., 76 Ill. 596;  
 Conway v. Younkin, 28 Iowa 295;  
 Warden, et al. v. Supervisors, 14 Wis. 618;  
 Miltimore v. Supervisors, 15 Wis. 10;  
 See Cooley on Taxation (3rd Ed.) 1443 and cases  
 cited.

C. It is further objected that the payment required of complainant is not a tax, but an arbitrary forced contribution. The arguments advanced to sustain this claim are the same as those advanced to sustain the claims last above referred to.

Its answer is found in the fact that the rate is fixed in the constitution, carried into effect by the legislature, and that complainant had every opportunity for hearing to which it was entitled.

## SIXTH.

## I.

**Is interstate commerce interfered with.**

Complainant does not make clear the particular ground of this objection. If it be that the effect of act 173 is to subject to restraint, the privilege of engaging in or carrying on interstate commerce, or to affect the receipts therefrom, the answer is that the tax imposed is on property located in Michigan. (*Constitution, Art. IV, §§ 10, 11; Act 173, 1901.*)

That the states have no authority to interfere with transportation between the states, to impose any restraint upon the right, privilege, occupation or business of engaging therein or to burden the receipts therefrom is established (*Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 695*), though the rule is now placed beyond question, that the states have full authority to tax, property used in, and, instrumentalities of, interstate commerce, regardless of such use or character or that the larger portion of the value upon which tax is laid originates in such interstate use.

This right has been sustained as to:

*Railroads:*

- Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421;
- Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439;
- Delaware Railroad Tax, 18 Wall. (85 U. S.) 206, 231, 232.

*Cars:*

- Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149;
- American Refrigerator Transit Co. v. Hall, 174 U. S. 70; s. c. 24 Col. 300;

Pullman Palace Car Co. v. Pennsylvania, 141 U. S. 19;

Marye v. B. & O. R. R. Co., 127 U. S. 117.

*Bridges:*

Henderson Bridge Co. v. Henderson City, 173 U. S. 592, 623;

Pittsburgh, etc. Ry. Co. v. Board of Public Works, 172 U. S. 32;

Henderson Bridge Co. v. Henderson City, 141 U. S. 689.

*Express Companies' Property:*

Adams Express Co. v. Ohio, 165 U. S. 194;

Adams Express Co. v. Ohio, 166 U. S. 185;

Adams Express Co. v. Kentucky, 166 U. S. 171, 180;

Fargo v. Hart, 193 U. S. 490.

*Telegraph Lines and Property:*

Western Union Tel. Co. v. Missouri, 190 U. S. 412;

Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S. 160, 163;

Western Union Tel. Co. v. Taggart, 163 U. S. 1 ;

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 697;

Western Union Tel. Co. v. Mass., 125 U. S. 590;

Western Union Tel. Co. v. Mass., 141 U. S. 40.

*Steamships:*

Transportation Co. v. Wheeling, 99 U. S. 273;

Moran v. New Orleans, 112 U. S. 69.

That the rule extends so far as to permit the states, where taxing, property engaged in, and, instrumentalities of, interstate commerce, to include the intangible value resulting from interstate commerce, is amply sustained.

Atlantic & Pacific Tel. Co. v. Phil., 190 U. S. 160, 163;

Western Union Tel. Co. v. Missouri, 190 U. S. 412, 422;

Western Union Tel. Co. v. Taggart, 163 U. S. 1;

Henderson Bridge Co. v. Kentucky, 166 U. S. 151;  
 Adams Express Co. v. Ohio, 166 U. S. 186; s. t. 165  
 U. S. 194;

Adams Express Company v. Kentucky, 166 U. S. 171;  
 Central Pacific R. R. Co. v. California, 162 U. S. 91;  
 New York L. E. & W. R. R. Co. v. Penn., 158 U. S.  
 431, 437;

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 698;  
 Cleveland C. C. & St. Ry. Co. v. Backus, 154 U. S.  
 446, 447;

Delaware Railroad Tax, 18 Wall. (85 U. S.) 206, 232.

Of this question in *Adams Express Co. v. Ohio* (166 U. S. 219), it was said:

"It matters not in what this intangible property consists—whether privileges, corporate franchises, contracts, or obligations. It is enough that it is property which though intangible exists, which has value, produces income and passes current in the markets of the world."

In *Cleveland C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 439, 445, 446, 447), it is said:

"The value of property results from the use to which it is put and varies with the profitableness of that use, present, prospective, actual and anticipated. \* \* \* In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much by another. Take the case before us; it is impossible to disintegrate the value of that portion of the road within Indiana and determine how much of that value springs from its use in doing interstate business, and how much from its use in doing business wholly within the State. An attempt to do so would be entering upon a mere field of

uncertainty and speculation. \* \* \* Either the property must be declared wholly exempt from State taxation, or taxed at its value, irrespective of the causes and uses which have brought about such value. \* \*

\* It is enough for the State that it finds within its borders property which is of a certain value. What has caused that value is immaterial. It is protected by State laws and the rule of all property taxation is the rule of value, and by that rule property engaged in interstate commerce is controlled the same as property engaged in commerce within the State."

The attitude of this court has been to sustain, if possible, statutes apparently imposing a burden on interstate transportation, or receipts therefrom. Where it has been possible to say that the tax, while not directly imposed on, was on account of property the corporation owned and which received protection of the laws, within the state, the court has done so and has sustained taxes where the amount was determined by reference to receipts, to capital stock, or to other elements.

*Postal Tel. & Cable Co. v. Adams*, 155 U. S. 688, 696, 697;

*New York, L. E. & W. R. R. Co. v. Penn.*, 158 U. S. 431, 438, 439;

*Western Union Tel. Co. v. Mass.*, 125 U. S. 530, 552;

*Pullman Palace Car Co. v. Penn.*, 141 U. S. 18, 25;

*Adams Express Co. v. Ohio*, 165 U. S. 220;

*Maine v. Grand Trunk Ry. Co.*, 142 U. S. 217.

See also:

*Fairbank v. United States*, 181 U. S. 297;

*State Tax on Railway Gross Receipts*, 15 Wall. (82 U. S.) 284.

In *Postal Telegraph & Cable Co. v. Adams* (155 U. S. 696, 697), it is said:

"But property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a State, and may take the form of a tax for the privilege of exercising its franchises within the State, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the State, (the exaction, therefore, not being susceptible of exceeding the sum which might be leviable directly thereon,) and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes. The corporation is thus made to bear its proper proportion of the burdens of the government under whose protection it conducts its operations, while interstate commerce is not in itself subjected to restraint or impediment. \* \* \* Doubtless no State could add to the taxation of property according to the rule of ordinary property taxation, the burden of a license or other tax, on the privilege of using, constructing or operating an instrumentality of interstate or international commerce, or for the carrying on of such commerce; but the value of property results from the use to which it is put and varies with the profitableness of that use and by whatever name the exaction may be called, if it amounts to no more than the ordinary tax upon property, or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the Constitution."

In *New York, L. E. & W. R. R. Co. v. Penn.* (158 U. S. 439), it is said:

"The interference with the commercial power must be direct and not the mere incidental effect of the re-

quirement of the usual proportional contribution to public maintenance."

*Henderson Bridge Co. v. Kentucky*, 166 U. S. 154;

*Adams Express Co. v. Ohio*, 166 U. S. 220.

See also:

*Louisville & N. R. R. Co. v. Kentucky*, 183 U. S. 503,  
519.

The cases sustain the direct tax on property at full value, including the intangible value resulting from carrying on an interstate commerce; the tax on property determined by reference to the invested capital or capital stock; the privilege tax, so fixed in amount as not to exceed the usual proportional contribution to public maintenance; the excise tax based on gross income, apportioned to the line within and without the taxing state on a mileage basis, and the principles established in these rulings so clearly sustain the Michigan statute, that it seems unnecessary to go into a discussion of possible objections.

## II.

**The mileage basis of apportionment and its application in this case.**

The only assignment of error on this point is in effect that interstate commerce is interfered with.

**A.** A railroad system may, for purposes of taxation, be treated and valued as a unit, the whole contributing to the value of every part; and where it extends into several states, the value may be apportioned among the several states, on a mileage basis,—this principle having been uniformly sustained and statutes using this basis of apportionment being in force in many states.

Adams Express Co. v. Kentucky, 166 U. S. 171, 180;  
Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439;

Adams Express Co. v. Ohio, 165 U. S. 195, 227;  
Western Union Tel. Co. v. Taggart, 163 U. S. 1;  
Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 697;  
Columbus Southern Ry. Co. v. Wright, 151 U. S. 471;  
Charlotte, etc. Ry. Co. v. Gibbes, 142 U. S. 386;  
Maine v. Grand Trunk Ry. Co., 142 U. S. 217;  
Pullman Palace Car Co. v. Penn., 141 U. S. 18;  
Marye v. Baltimore & Ohio R. R. Co., 127 U. S. 117;  
Western Union Tel. Co. v. Massachusetts, 125 U. S. 530;

Delaware Railroad Tax Cases, 18 Wall. (85 U. S.) 206;

American Refrigerator Company v. Hall, 174 U. S. 78;

Fargo v. Hart, 193 U. S. 490.

To the use of a strict mileage basis there are two exceptions; it cannot be applied:



*First*—So as to bring, within the taxing state, property not connected with or a part of the railroad business and which has an actual situs in some other state, (*Fargo v. Hart*, 193 U. S. 500), nor,

*Second*—Can it be applied where, by reason of the existence of valuable terminals in one state, which contribute to and greatly enhance the value of the system, its application would be unfair, as bringing within the taxing state a greater proportion of the value than that state would equitably be entitled to.

*Pittsburgh C. C. & St. L. Ry. Co. v. Backus*, 154 U. S. 421, 431.

*Western Union Tel. Co. v. Taggart*, 163 U. S., 1, 23.

*Adams Express Co. v. Ohio*, 165 U. S. 194-221.

In *Cleveland C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 445), after saying that where a road enters into two states, each is entitled to tax the proportionate share of the value flowing from the operation of the entire mileage as a continuous road and is not bound to enter upon a disintegration of values and attempt to extract from the total value of the entire property, that which would exist if the road within the state were operated separately, it is said:

“The question is, how can equity be secured between the States, and to that a division of the value of the entire property upon the mileage basis is the legitimate answer.”

B. The statute (*Sec. 8, act 173 of 1901*), under which the state board of assessors acted in making the assessments now questioned, does not (as construed by that board and the attorney general), require that board to apportion the value of property in this state, arising from interstate systems, upon an absolute mileage basis, but permits the exercise, by the board, of such a discretion as to allow it to make apportion-

ment in accordance with the facts, and to recognize and give effect to those considerations which would render the use of an absolute mileage basis unfair. The statute (Sec. 8, act 173 of 1901), provides that:

"In determining the true cash value of the property of railroad and union station depot companies, which own, lease, or operate lines partly within and partly without this State, the said Board shall be *guided*, in ascertaining the property subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of main track of the said companies, both within and without this State."

C. The complainant has not shown that it falls within the exceptions rather than the rule above stated, permitting the application of the unit system, or that the application to it of an absolute mileage basis of apportionment would subject to taxation in Michigan a larger proportion of its value than should be taxed here. While complainant has in general terms claimed the result of the assessment to be to subject to taxation in Michigan, property located in other states, the method in which such taxation of property outside the state was made and the amount or character thereof is not shown.

The presumptions, in favor of the validity of the assessment and apportionment made, have in no way been overcome by complainant. It has made:

(a) No claim on review or in its pleadings and have furnished no proof, to the effect that an absolute mileage basis of apportionment was used.

(b) No claim or showing that the use of an absolute mileage basis would be unfair.

(c) No claim or showing that the value of its

terminals, mileage or other property located in other states, or its terminals, mileage or other property in Michigan are out of proportion to the mileage of the systems located in such states.

(d) No claim or showing that the effect of the assessment is to include detached property not used in its railroad business, located in other states than Michigan.

Defendant in his answer (*Record*, 49), sets forth:

"That said act does not purport to tax, or permit or require the taxation of any property which is situate outside of the state of Michigan, but permits the said state board of assessors, in determining the value of the property of railroad and union station and depot companies in this state, which own, lease, or operate lines partly within and partly without this state, to be guided by the relation which the number of miles of main track within the state of Michigan bears to the entire mileage of the main track of said companies both within and without this state; that the said act purports to tax only property within the state of Michigan and the mileage without the state is used simply as a basis for determining the value of the Michigan property.

That while the said complainant was authorized to, and did appear before the said state board of assessors in relation to the assessment of its property, it made no showing that the determination of the value of its property in this state upon the mileage basis was unfair or that the portion of its property in other states was of greater value or possessed of greater earning power than its property situate within this state, and that the said state board of assessors in its assessment of the property of said complainant included no prop-

erty of said complainant situate beyond the jurisdiction of the state whether real or personal and whether engaged in its railroad business or otherwise, and all facts which enhanced or augmented the value of any portion of complainant's property situated beyond the limits of the state which would render the use of an absolute mileage basis unfair, were taken into consideration in making such assessment; and no facts existed which were not taken into consideration by said state board of assessors in making said assessment which would subject to taxation in this state a larger portion of complainant's property than is actually situated here."

D. The presumptions all favor the validity of the assessments; it cannot be assumed that the act was intended to have, or that the state board of assessors gave it, extra-territorial operation and included property not within its jurisdiction. This presumption, has not been overcome by any proof made; indeed, it is not possible, in a case of this character to introduce proof which would overcome the presumption of validity of the assessment in the absence of fraud or its equivalent in making the assessment. It might be possible to overcome the presumption that an absolute track mileage basis of apportionment was reasonable or fair, but where as in this case a discretion is given to the board of assessors in making the apportionment, that discretion, when once exercised is absolute in the absence of fraud and cannot be overcome by proof.

Pittsburgh C. C. & St. L., Ry. Co. v. Backus, 154 U. S. 436;

Maish v. Arizona, 164 U. S. 611;

McLeod v. Receveur, 71 Fed. 458.

Adams Express Co. v. Ohio, 165 U. S. 229.

The case at bar is very similar to that of *Pittsburgh C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 421), where the Indiana law providing for the valuation and taxation by a state board of assessors of railroads by a unit system and permitting it, in apportioning the value, attributable to Indiana, of interstate systems, to be *guided* by the relation the mileage within the state bore to the entire mileage of the company, was under consideration. While in one particular that case is slightly different from the one at bar (it having been there shown that terminal facilities rendered the use of an absolute mileage apportionment unfair) the ruling there is decisive of the questions here presented. By authority of the above case, the following propositions may be regarded as settled; that,

(a) Extra-territorial operation, of the statute, will not be presumed. (428.)

(b) The use, of an absolute mileage basis of apportionment, is not required by the statute. (430.)

(c) Only in exceptional cases is the use of an absolute mileage basis unfair, the presumption being that it is fair. (431.)

(d) If testimony to the effect that an absolute mileage basis was unfair were presented, it must be presumed, in the absence of anything to the contrary, that the board, in making the assessment, took into consideration the actual facts as exhibited to it. (431.)

(e) The fact that there were peculiar matters which gave to the portions of the road outside the state an enormous value as compared with the normal line of the road, does not prove that the board did not take these peculiar matters into consideration, the presumption being that if its attention was called to these facts it did take them into consideration. (435-436.)

(f) Whether in any particular case, such matters are taken into consideration by the assessing board, does not affect the validity of the statute, as it does not require the value of the property in the state to be determined upon an absolute mileage basis. (431-432.)

(g) It is for the companies to present any special circumstances which exist and failing their doing so, the presumption is that all their property is directly devoted to their business, which being so, the proper distribution of its aggregate value would be upon the mileage basis. (*Adams Express Co. v. Ohio*, 165 U. S. 222; 166 U. S. 222.)

E. Any objection along this line which complainant had to make should have been presented to the board of review or it must be considered as waived. (*See cases cited ante p. 130, 131.*) It has made no showing that this was done.

**SEVENTH.**

**Is the ad valorem system for the taxation of railroads, invoked by act 173, a proper exercise of the reserved right to alter, amend, or repeal corporate charters?**

(1.) Objections arising under the fourteenth amendment of the Federal constitution are completely answered if the system invoked is a proper exercise of the reserved right to alter, amend, or repeal. Previous to this system of taxation, provisions for taxation of railroad companies by a specific system were a part of the general railroad laws; by act 173 these were superseded, and the new provisions, although contained in a separate and distinct act, became a part of the law, governing the existence of railroad corporations, and a part of the contract between the companies and state.

Act 173 abrogates the article of the general railroad law, relating to taxation and by substitution takes the place of the provisions, therein contained, relating to taxation of companies organized thereunder, and governs them in that respect. In this substitution it was intended to give act 173 the same force and effect, as applied to railroad companies, as was previously given to the article, of the general railroad law relating to taxation. In making substitution it was intended that when the old provisions contained in the general railroad law relating to taxation were abrogated, the new provisions should take their place and should stand in the same relation to, and in effect as fully constitute a part of, the general railroad law as did the previous provisions; act 173, so far as it relates to railroad companies, became an amendment to the general railroad law. Had this been an act regulating rates or imposing a police regulation, would it be questioned that it formed a part of the governing law? I think not; there is no reason why the same rule should not

apply to a statute for taxation, and every reason why it should.

No direct statement of the legislature to effect such amendment, other than contained in the clause (§ 20, Act 173 of 1901), abrogating the taxation provisions of the general railroad law is made, but that is not necessary—the amendment results by implication.

*People v. Mahaney*, 13 Mich. 489.

Provisions for taxation form a logical and usual part of acts of incorporation. All general acts of Michigan for incorporation and regulation of railroad companies have contained provisions relating to, and prescribing the rate, and system, of taxation. This is indicative of the policy of the state to have the charter or act of incorporation a complete act, representing fully the powers, rights and duties of corporations subject thereto. It is not a violent presumption to assume that the legislature, in the adoption of the new system of taxation intended to continue this policy, and that act 173 of 1901 in superseding the previous law, took its place in, and became part of, the same statute. The proposition seems clear and is supported by numerous cases, holding that acts adopted without reference to the provisions of a charter or act of incorporation become a part thereof.<sup>(a)</sup>

<sup>1</sup> *New York & New Eng. R. R. Co.'s Appeal*, 62 Conn. 527, 538;

<sup>2</sup> *Columbia, etc. R. R. Co. v. Gibbes*, 24 S. C. 60, 73;

NOTE. (a) The provisions of a separate general law held to become a part of the previous charter or act of incorporation was in:

<sup>1</sup> *New York & New Eng. R. R. Co.'s Appeal*, a provision for the separation of grade crossings and the requirement that a large portion of all of the expense be borne by the railroad; in

<sup>2</sup> *Columbia, etc. R. R. Co. v. Gibbes*, that the corporation should bear the entire expense of a state railroad commission; in



- <sup>1</sup> Alabama & V. Ry. Co. v. Odeneal, 73 Miss. 34;
- <sup>2</sup> St. Louis, I. M. & S. Ry. Co. v. Paul, 64 Ark. 83, 95 Id., 173 U. S. 404;
- <sup>3</sup> Northern Central Ry. Co. v. Maryland, 187 U. S. 258, 268, 269;  
State v. Northern Central Ry. Co., 90 Md. 447, 469;
- <sup>4</sup> Bangor, Oldtown & Milford R. Co. v. Smith, 47 Me. 34, 48, 49;
- <sup>5</sup> Durand v. N. H. & N. Co., 42 Conn. 211, 223;
- <sup>6</sup> City of Roxbury v. Boston etc. R. R., 60 Mass. 432;
- <sup>7</sup> St. Albans v. Car Co., 57 Vt. 82;
- <sup>8</sup> Tomlinson v. Jessup, 82 U. S. 454, 457.  
Leep v. Railway Co., 58 Ark. 407;
- <sup>9</sup> Stearns v. Minnesota, 179 U. S. 260, (Dissenting opinion);  
Penn. R. R. Co. v. Duncan, 111 Pa. St. 352.

---

NOTE. <sup>1</sup> Alabama & V. Ry. Co. v. Odeneal, the provision related to, and provided for farm crossings; in

<sup>2</sup> St. Louis, I. M. & S. Ry. v. Paul, a penalty for neglect to pay employees in full upon termination of employment; in

<sup>3</sup> Northern Central Ry. Co. v. Maryland, a provision in reference to taxation; in

<sup>4</sup> Bangor, Oldtown & Milford R. Co. v. Smith, a provision providing among other things the procedure of railroad corporations in the location of their tracks and prescribing limitations thereon; in

<sup>5</sup> Durand v. N. H. & N. Co., a provision requiring all railroad companies to maintain fences; in

<sup>6</sup> City of Roxbury v. Boston, etc. R. R., the subsequent act related to railway crossings and the separation of grades; in

<sup>7</sup> St. Albans v. Car Co., the provision of the subsequent law becoming a part of the charter related to the taxation of the shares of stock; in

<sup>8</sup> Tomlinson v. Jessup, the separate act was a reservation of the right to alter, amend, or repeal.

<sup>9</sup> Stearns v. Minnesota provision relating to taxation.

In *New York & New Eng. R. R. Co.'s Appeal* (62 Conn., 527, 538), a general statute making provision for separation of grade crossings of railroads, was held to operate as an amendment to the charters of the railroad corporations affected by it, the court saying:

"The statute is in its operation an amendment to the charter of each of the railroad corporations affected by it. It imposes on the plaintiff, being a corporation of that kind, an obligation which previous to its passage the charter of the plaintiff did not impose. But as that charter contained the provision that it might be altered at pleasure by the legislature, the statute is binding upon it."

In *Columbia, etc. Railroad Company v. Gibbes* (24 S. C., 60, 72, 73), a general statute of South Carolina providing for railroad commissioners and that the expenses thereof should be borne by the several railroads of the state according to their gross income, was held to become a part of the charter of every railroad company-thereafter incorporated, and that such corporations could not object to its validity. Of objection to the act by a corporation subsequently created, it was said:

"It may be that the general law of 1879 cannot be considered as an amendment of the charter of plaintiffs, for the very conclusive reason that it was in existence at the time the charter was granted; but, as it seems to us, it was more than an amendment—it was a part of the charter itself, or at least one of the conditions upon which the charter was granted and accepted. \* \* \* On November 22, 1880, when the Secretary of State certified that the purchasers of the Greenville Railroad had formed a new corporation under the laws of the State, there was on the statute book of the State a general law, part of what is called the

general railroad law of the State, declaring that every railroad company of the State should contribute its just proportion towards the payment of the expenses of the railroad commission then in existence. Under these circumstances, the charter to the plaintiff corporation was granted by the State, without any reference whatever to the aforesaid liability declared by law; and as the intention of parties must concur to constitute a contract, we are not at liberty to assume that the State intended to grant, or did grant, to the plaintiff any vested rights inconsistent with her own law then on the statute book. The purchasers who became corporators had notice of that law. They accepted the charter in full view of a public act of which all are bound to take notice, and it thereby became a condition of the charter—in a certain sense, a part of the contract—and they cannot afterwards be heard to object to the enforcement of that law. 'In general, one who accepts the terms of a contract must accept the same *in toto*; he cannot accept part and disclaim the rest.' Big Estop., 514.

But it is said that the exaction is in itself unconstitutional, and being such, the legislature could not assume a power prohibited by the constitution even with the consent of the parties concerned. We have endeavored to show that whether an exaction by the State upon a corporation is or is not constitutional must depend upon the character of the rights with which the State has endowed the corporation. If it has been invested with no rights of which the exaction would be an infringement, we do not clearly see how it could be called unconstitutional, any more than the provision in most railroad charters that the company shall at its own expense erect fences, cattleguards, etc.

If the state were now to create a railroad corporation and insert in the charter *in totidem verbis*, the provision requiring that it should pay its just proportion of the expenses of the railroad commission, and the corporators should accept that charter and put the road into operation, we suppose there can be no doubt that they would be bound by all the provisions of the contract, and would not be heard to say that the one in reference to the payment of the expenses of the railroad commissioners was unconstitutional and void."

*In Tomlinson v. Jessup* (82 U. S. 454, 457), in speaking of a general statute in force at the time the railroad company's charter was granted, the court said:

"The company was incorporated in 1851, and at that time a general law of the State was in existence, passed in 1841, which enacted that the charter of every corporation subsequently granted, and any renewal, amendment, or modification thereof, should be subject to amendment, alteration, or repeal by legislative authority, unless the act granting the charter or the renewal, amendment, or modification, in express terms excepted it from the operation of that law. The provisions of that law, therefore, constituted the condition upon which every charter of a corporation subsequently granted was held, and upon which every amendment or modification was made. They were as operative and as much a part of the charter and amendment, as if incorporated into them."

In *Alabama & V. Ry. Co. v. Odeneal* (73 Miss. 34) a provision in a separate act, relative to farm crossings was, as applied to a subsequently organized corporation, held to be "integrated into its charter upon organization."

In *St. Louis, I. M. & S. Ry. Co. v. Paul* (64 Ark. 83, 95; 173 U. S. 404) a separate act imposing penalty for failure to

make immediate payment of wages on discharge of employees, was held to become part of the general railway law by amendment;

And in *Northern Central Ry. Co. v. Maryland* (187 U. S. 258), a separate and distinct statutory provision fixing a rate of taxation, was held to become part of the act of incorporation so as to be within the purview of the reserved right to alter, amend or repeal.

Only on the ground that act 173 of 1901 is an exercise of the reserved right to alter, amend or repeal corporate charters, does it escape impairing the obligation of contract, resulting from corporate charters where such right is not reserved, being the exercise of such right it is necessarily a substitution for and takes the place, of previous provisions, which it supersedes, in the organic law of existing companies and becomes part of charters of companies thereafter created.

The general railroad law and act 173 of 1901 are *pari materia*, to be read and construed as one enactment.

Chicago R. I. & P. Ry. Co. v. Zerneck, 59 Neb. 689, 696;

McHenry v. Brett, 9 N. D. 68, 70;

Dennison v. Allen, 106 Mich. 295;

Shannon v. People, 5 Mich. 36, 50;

Ryan, et al. v. Carter, et al., 93 U. S. 78, 84;

Alexander v. Mayor, 5 Cranch, 7;

Hendrix v. Rieman, 6 Neb. 517, 522;

Black on Interpretation of Laws, p. 204, Sec. 86.

(2.) *The reservation of the right to alter, amend, or repeal, and its effect generally.*

The constitution of Michigan (§ 1, Art. XV), reserves the right to alter, amend, and repeal corporate charters and privileges as follows:

"Corporations may be formed under general laws,

but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

And the general railroad law, under which complainant does business in Michigan, contains (§6312, *C. L.* 1897), the provision:

"This act may at any time be altered, amended or repealed, but such alteration, amendment or repeal shall not affect the rights of property of companies organized under it," etc.

These reservations have been before the supreme court of Michigan in numerous instances, and that court has been uniform in its decisions to the effect that all acts of incorporation, and rights dependent upon their existence, are subject to this reserved power, and in all particulars to legislative control.

*Detroit v. Detroit & Howell Plank Road Co.*, 43 Mich. 140, 147;

*Detroit St. Rys. v. Guthard*, 51 Mich. 180, 182;

*Detroit v. Railway Co.*, 76 Mich. 421, 426;

*Mason v. Perkins*, 73 Mich. 303, 318;

*Bissell v. Heath*, 98 Mich. 472, 478;

*Attorney General v. Looker*, 111 Mich. 498, 501; affirmed, 179 U. S. 46;

*Smith v. Lake Shore & M. S. Ry. Co.*, 114 Mich. 460, 462.

In the early case of *Detroit v. Detroit & Howell Plank Road Co.* (43 Mich. 147), Judge Cooley, in passing upon the authority of the legislature to amend and repeal corporate charters where the power to do so was reserved, said:

"But for the provision in the constitution of the United States which forbids impairing the obligation of contracts, the power to amend and repeal corporate charters would be ample without being expressly

reserved. The reservation of the right leaves the state where any sovereignty would be if unrestrained by express constitutional limitations, and with the powers which it would then possess. It might therefore do what it would be admissible for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles."

In *Smith v. Lake Shore & Michigan Southern Railway Co.* (114 Mich. 473, 475), in considering the right of the legislature under its reserved constitutional and statutory authority to alter, amend, or repeal corporate charters, to amend the provisions of the general railroad law relating to rates of transportation, the court, after quoting with approval the language used by Judge Cooley, in *Detroit v. Detroit & Howell Plank Road Co.* (43 Mich. 147), says:

"We think this is a fair statement of the effect of this reservation, and that, if the legislation in question can be construed as depriving the respondent of its property, it is invalid, as conflicting with other constitutional provisions. But we do not think that such is the effect of this legislation. \* \* \* My conclusions are that the regulation is not unconstitutional as applied to roads within the control of the legislature."

The Federal cases upholding the right of a state to repeal, alter, or amend corporate charters, where the right so to do is reserved, are numerous, and sustain the propositions:

(a) The history of the inclusion in corporate charters of a clause reserving the right to alter, amend, or repeal, indicates that such practice grew from a suggestion contained in the opinion of Mr. Justice Story, in the Dartmouth College case (4 Wheat, 518, 708, 712), to the effect that corpora-

tions and corporate charters might by such reservation be kept under control.

(b) Where the right to repeal, alter or amend is reserved, the corporate charter and all rights and privileges held thereunder are subject to legislative control, and may be repealed or taken away at the will of that body.

(c) "Vested rights, it is conceded, cannot be impaired under such a reserved power, but it is clear that the power may be exercised and to almost any extent, to carry into effect the original purpose of the grant, and to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation."

Union Passenger Ry. Co. v. Philadelphia,  
101 U. S. 528;

Hoge v. Railway Co., 99 U. S. 348, 351;

Greenwood v. Freight Co., 105 U. S. 13;

Railroad Co. v. Maine, 96 U. S. 499;

Louisville Water Co. v. Clark, 143 U. S. 10,  
and cases cited;

Sinking Fund Cases, 99 U. S. 700;

Pearsall v. Great Northern Ry., 161 U. S.  
663;

Covington v. Kentucky, 173 U. S. 232, and  
cases cited;

Citizens' Savings Bank v. Owensboro, 173  
U. S. 636, and cases cited;

Tomlinson v. Jessup, 15 Wall. 454;

United States v. Union Pacific Ry., 160 U.  
S. 37, and cases cited.

See also

Miller v. State, 82 U. S. 478, 499;



*Holyoke Co. v. Lyman*, 82 U. S. 500;  
*Pennsylvania College Cases*, 80 U. S. 190;  
*Spring Valley Water Works v. Schottler*,  
 110 U. S. 347;  
*Bienville Water Supply Co. v. Mobile*, 186  
 U. S. 222;  
*St. Louis, I. M. & S. Ry. Co. v. Paul*, 173  
 U. S. 494;  
*New Jersey v. Yard*, 95 U. S. 104;  
*Hamilton Gas Light Co. v. Hamilton City*,  
 146 U. S. 271.

(3.) In the numerous instances in which this reserved right has been before the courts, it has been established that its purpose and effect is to keep the rights, powers and privileges of corporations under control, to prevent the conferring of rights by one legislature which cannot be abrogated by a subsequent one and to permit the imposition of any regulation not unreasonable or oppressive and which does not deprive the corporation of its vested property interests, interfere with existing contracts, or interstate commerce or in the exercise of the right to amend, essentially impair the object of the corporation.

In its exercise it has been held, that the state may do anything which it might do, if unrestrained by express constitutional limitations<sup>1</sup>; abrogate the act of incorporation, deprive the corporation of existence, and create another corporation to exercise the same franchises and take over its property;<sup>2</sup> enact any regulation which it might have included in the original act of incorporation;<sup>3</sup> withdraw exemptions from

NOTE. <sup>1</sup> *Detroit v. Detroit & Howell Plank Road Co.*, 43 Mich. 147.

<sup>2</sup> *Greenwood v. Freight Co.*, 105 U. S. 13, 17; *Lothrop v. Stedman*, 13 Blatch (U. S. 134.

<sup>3</sup> *Sinking Fund Cases*, 99 U. S. 720, 721; *Atchison T. & S. F. R. R. Co. v. Matthews*, 174 U. S. 104.

taxation;<sup>4</sup> alter the system of taxation imposed by the charter;<sup>5</sup> regulate the right of contract with employees and impose penalty for failure to pay employees on termination of the employment;<sup>6</sup> provide a system of securing to the minority shareholders representation on the board of directors;<sup>7</sup> regulate rates of fares to be charged by railroads and other public service corporations;<sup>8</sup> impose on railroad companies only, a tax for the maintenance of a railroad commission;<sup>9</sup> change the route of a railroad;<sup>10</sup> and in fact impose any reasonable regulation which does not deprive the corporation of vested property rights, interfere with valid existing contracts, or essentially impair the object of the incorporation;<sup>11</sup> but in the exercise of this reserved power, the legislature cannot invade property rights, establish or make unreasonable regulations or impositions, interfere with existing contracts, or in the exercise of the power to amend, impair the object of the incorporation.<sup>12</sup>

<sup>4</sup> *Tomlinson v. Jessup*, 82 U. S. 454; *Louisville Water Works Co. v. Clark*, 143 U. S. 1; *Railroad Co. v. Maine*, 96 U. S. 501;

<sup>5</sup> *Mayor v. St. Ry. Co.*, 113 N. Y. 319; *Union Passenger Ry. Co. v. Phil.* 101 U. S. 528; *Citizens' Savings Bank v. Owensboro*, 173 U. S. 636.

<sup>6</sup> *St. Louis, I. M. & S. Ry. Co. v. Paul*, 173 U. S. 404.

<sup>7</sup> *Looker v. Maynard, Attorney General*, 179 U. S. 46; 111 Mich. 498, 501.

<sup>8</sup> *Smith v. L. S. & M. S. Ry. Co.*, 114 Mich. 460, 472; *Spring Valley Water Works Co. v. Schottler*, 110 U. S. 347; *Peik v. Chicago, etc., Ry. Co.*, 94 U. S. 164.

<sup>9</sup> *Charlotte, etc., R. R. Co. v. Gibbs*, 27 S. C. 385.

<sup>10</sup> *Township v. N. Y., etc., R. R. Co.*, 45 N. J. E. 436.

<sup>11</sup> *New York & N. E. Ry. Co. v. Bristol*, 151 U. S. 567; *Hamilton Gas Light Co. v. Hamilton City*, 146 U. S. 258.

<sup>12</sup> *St. Louis, I. M. & S. Ry. Co. v. Paul*, 173 U. S. 408-409; *Stearns v. Minnesota*, 179 U. S. 240; *Louisville Water Co. v. Clark*, 143 U. S. 1, 15; *Bienville Water Supply Co. v. Mobile*, 186 U. S. 222; *Shields v. Ohio*, 95 U. S. 324.

The extent of the reserved power is so well understood that it is unnecessary to refer at length to the cases to indicate it. If, as has been held, the legislature in its exercise has authority to abrogate entirely the existence of the corporation and withdraw all its franchises, rights, privileges, and immunities which depend for existence and continuance on the charter contract, and may impose any restriction or make any regulations which it could have made on the original creation of the corporation, it must necessarily follow that it can take the milder course and impose a new system of taxation which, while placing the corporation on a basis slightly different from that applied to property generally, continues its existence and permits full enjoyment of its rights and property. The greater carries with it the lesser authority.

(4.) But as indicated by cases referred to, the authority is not without limit; the exceptions to and limitations upon it have been established to be that the regulation shall not, be oppressive, unfair or unreasonable (of which it would seem the legislature must judge), deprive the corporation of vested rights of property or interfere with existing contracts, and in the exercise of the power to amend shall not essentially impair the object of the incorporation. These, and these only, are the limitations established by the cases and unless the authority, attempted to be exercised in this instance, falls within them, it follows that the legislature was well within its power in the enactment of the statute in question.

In *United States v. Union Pacific Railroad Co.* (160 U. S. 36-37), it was said:

"It may be held that by its reservation of authority to add to, alter, amend, or repeal the acts in question, whenever it chose to do so, congress, subject to the limitation that rights actually vested or transactions fully

consummated could not be disturbed, intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri river and the Pacific ocean, through the agency of corporations created by it or that had accepted the bounty of the government."

In *Greenwood v. Freight Co.*, (105 U. S. 18), it was said:

"One obvious effect of the repeal of a statute is that it no longer exists. Its life is at an end. Whatever force the law may give the transactions into which the corporation entered and which were authorized by the charter while in force, it can originate no new transactions dependent on the power conferred by the charter. \* \* \* In short, whatever power is dependent solely upon the grant of the charter, and which could not be exercised by unincorporated private persons under the general laws of the state, is abrogated by the repeal of the law which granted these special rights. \* \* \* The rights of the shareholders of such a corporation to their interest in its property are not annihilated by such a repeal, and there must remain in the courts the power to protect those rights."

The reservation of this right is not the mere retaining of a right of control, but forms a condition of the contract between state and corporation. That corporate charters create contracts is amply sustained. In cases of the reservation of the right to alter, amend, or repeal, the relation is none the less that of contract; but in, and part of, that contract is the reservation by which the state has secured the right to make and the company has consented to, subsequent alterations by the legislature.

*Hoge v. Railroad Co.*, 99 U. S. 353;

*Louisville Waterworks Co. v. Clark*, 143 U. S., 15;

*Hamilton Gas Light Co. v. Hamilton City*, 146 U. S.

The reservation being part of the contract it gives the legislature authority, subject to constitutional limitations protecting property rights and contract obligations, to enact any regulation or restriction which will not impair the purpose of the contract, i. e. the object of the incorporation and it is not for the corporation to object on the ground that equal protection of the law is denied. It has contracted that the state might alter the existing contract, and having done so, it is not open to it to claim that, because regulations, exactions or restrictions, are imposed upon or required of it and its property, not required of property owners generally, it is denied equal protection.

This view is sustained by *St. Louis I. M. & S. Ry. Co. v. Paul* (173 U. S. 408-9), where a police regulation, imposed by the state, referring to and restricting rights of railroad companies in contracts made with employees, was questioned as denying to the railroad companies equal protection of the laws. The provision was held not an improper exercise of the reserved right, the court saying:

"The contention is that as to railroad corporations organized prior to its passage, the act was void because in violation of the fourteenth amendment. Corporations are the creations of the state, endowed with such faculties as the state bestows and subject to such conditions as the state imposes, and if the power to modify their charters is reserved, that reservation is a part of the contract, and no change within the legitimate exercise of the power can be said to impair its obligation; and as this amendment rested on reasons deduced from the peculiar character of the business of the corporations affected and the public nature of their functions, and applied to all alike, the equal protection of the law was not denied. \* \* \* the supreme court held the regulation as promoting the public in-

terest in the protection of employees to the limited extent stated, to be properly within the power to amend reserved under the state constitution. \* \* \* We do not think that conclusion in its application to the power to amend can be disputed on the ground of infraction of the fourteenth amendment."

Leep v. Railway Co., 58 Ark. 407;

Atchison, T. & S. F. R. Co. v. Matthews, 174 U. S. 104;

Woodson v. State, 69 Ark. 521, 528;

Skinner v. Garnet Gold Mining Co., 96 Fed. 744.

In *Atchison, T. & S. F. R. R. Co. v. Matthews* (174 U. S. 104), it was said:

"It is also clear that the legislature (which has power in advance to determine what rights, privileges, and duties it will give to and impose upon a corporation which it is creating) has under the generally reserved right to alter, amend, or repeal the charter, power to impose new duties and new liabilities upon such artificial entities of its creation."

We do not argue that in the exercise of this power and the imposition of a different system of taxation on the property of complainant, than applied to property generally, the state could tax to such extent as to destroy the property; as in such a contingency the case might possibly be within one of the limitations on the authority of the legislature.

It seems that the limitations on the exercise of this power are very similar to those on the right of the legislature, acting in fixing maximum rates of charges for public service corporations. In those cases the limitation is that the rate shall be reasonable, i. e., shall not be so low as to deprive the corporation of some return on the value, and thus practically deprive it, of its property.

In cases of this, as in cases of that, character:

(a) The presumption is that the system invoked is reasonable and does not interfere with property rights or contract obligations;

(b) Only where the regulations are so oppressive as to amount to spoliation, can the courts interfere;

(c) The burden is on the person attacking the statute to prove its unreasonableness;

(d) Every presumption is to be resolved in favor of the authority exercised by the legislature;

(e) There is a question as to whether the judgment of the legislature on the question of unreasonableness is not final.

There has been no showing, or attempted showing that the tax in question is unreasonable, or that its effect would be to impair vested rights, or the obligation of existing contracts, and not having overcome the applicable presumptions they necessarily apply and control.

The system in question is not unreasonable; its purpose, evident, and actual, is to subject corporations taxed under act 173 to the same rate of taxation imposed according to the same principles and to practically the same rules, as imposed on other property throughout the state; the only difference of moment being that the taxing machinery and officers making the assessment and imposing the tax are different. The purpose of the act is not to bring about inequality or oppression, or to burden the corporations taxed under act 173 with more than their just contribution to the public, but it is to place them upon a parity with other property throughout the state. Under no circumstances can this be claimed to be within the limitations on the power to alter, amend or repeal.

(5.) The validity of the act as applied to railroad corporations is not dependent on its validity as applied to other corporations affected by it.

Pittsburgh, etc. R. R. Co. v. Montgomery, 152 Ind.  
1, 13;

Tullis v. Lake Erie & Western R. Co., 175 U. S. 348,  
351;

Leep v. Railway Co., 58 Ark. 407, 408;

See also 173 U. S. 407.

As applied to railroad corporations, act 173 comprises a complete system capable of complete and separate operation as against the property of those corporations alone.



**EIGHTH.**

**The system of taxation under act 173 as violating the state constitution.**

Two particulars are assigned wherein the system under act 173 violates the state constitution:

**A.** That the assessment of complainant's property under act 173 without deduction of debts from credits, that deduction being permitted to other property owners, violates sections 10 and 11 of article XIV of the Michigan constitution requiring uniformity.

**B.** That the assessment of complainant's property without the deduction of debts from credits, such deduction being accorded to other property, violates section 12 of article XIV of the Michigan constitution requiring all assessments of property to be at cash value, and section 10 of article XIV requiring the property of corporations to be assessed at cash value.

**A.** *Considerations applying specially to the uniformity provision of the state constitution.*

(1.) The objection raised under this provision of the constitution is answered by a reference to the purposes for which the constitutional amendments of 1900 affecting this and other provisions of the state constitution, were adopted. Previous to amendment, the state constitution contemplated and permitted but one uniform rule of taxation. All property taxed for general taxes throughout the state was required to conform to that rule and any system of taxation which varied it as applied to the property of corporations, was not permitted. (*Pingree vs. Auditor General*, 120 Mich. 95.) The purpose of amendment was to permit one uniform rule ap-

plicable to the general properties of the state and another distinct and separate uniform rule applicable to the property assessed by a state board of assessors. The amendments provided different agencies of assessment, and intended that different incidents might be applied, in the different classes.

In section 11, article XIV of the constitution, it is required:

"That the Legislature shall provide a uniform rule of taxation \* \* \* and taxes shall be levied upon such property as shall be prescribed by law."

To this rule there are two exceptions,—(a) Property paying specific taxes; (b) property assessed by a state board of assessors, the latter being subject to assessment by an uniform rule of its own.

(2.) If as complainant contends, but one uniform rule were permitted, no change in the constitution would have been necessary, the change being made only to permit assessment of the property subject to act 173 by a separate and distinct rule. The property for the assessment of which the legislature was permitted and intended to provide, by a state board of assessors, was of a peculiar character with regard to which different rules of assessment, review, equalization, etc. might properly be made and were intended in the amendment to be made, and any conclusion which finds that the deduction of credits must be uniform in each class must also apply the uniform rule to these other elements and incidents in direct conflict with the purposes with which the change in the constitution was made.

(3.) The provision of section 11 of article XIV of the constitution is as follows:

"The legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and

taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes."

The structure of this section indicates that the uniform rule to be applied to the property of corporations subject to assessment by a state board of assessors is an exception to and different from the uniform rule applied in the assessment of other property. Ordinarily a proviso is an exception to the language which precedes it.

*Minis v. United States*, 15 Peters, 445;

*Carroll v. State*, 58 Ala. 401;

*Sloat v. McComb*, 42 N. J. L., 484;

(4.) The requirement of a uniform rule of taxation for all property assessed upon its value, has always existed in the Michigan constitution and is a known and settled rule, and had it been intended that the property to be assessed by a state board of assessors should be assessed by the same uniform rule, instead of making the requirement that this property should be assessed by "*a uniform rule*," the requirement would have been that it be assessed according to *the* uniform rule. This emphasizes the intent to permit a separate rule for each class.

(5.) Previous to the constitutional amendments of 1900, the one uniform rule which existed permitted deductions to one class of property or property owners which were not given to another class of property or its owners, e. g., ex-

emptions of various kinds were permitted—exemption of credits to the amount of debts was permitted and sustained, while such exemptions were not permitted to personal property generally.

*B. Considerations attaching specially to the requirement of assessment at cash value.*

(1.) The basis of complainant's contention is that the permission of the deduction of debts from credits is a rule of valuation which enters into and effects an increasing or diminishing of the assessed value of the property which is actually assessed. In truth, the deduction is clearly not a rule of valuation. Such is the necessary effect of the previous practice in Michigan. Under that practice the deduction of debts has been uniformly accorded to certain classes of property and denied to other classes, and this practice has always been thought and held consistent with the rule that property must be assessed at cash value. If the deduction of debts from credits amounts to a rule of valuation, the practices and systems in vogue in Michigan under the constitution previous to amendment, have always been illegal.

(2.) If it be conceded, as complainant claims, that the deduction of debts from credits in the valuation of property amounts to a rule of valuation rather than an exemption, this does not affect the constitutionality of the system invoked by act 173, but rather the legality of the system wherein that deduction is given. The constitutional requirement in the assessment of the general property of the state is that it shall be assessed at its cash value. No other rule of valuation than assessment at cash value is permitted, and anything which eliminates from the consideration of the assessor any element of value which reduces the assessment below cash value, is in contravention of the constitutional requirement. It neces-

sarily follows, therefore, that, if the deduction of debts from credits amount to a rule of valuation, instead of the existing conditions affecting the constitutionality of act 173, the effect is that the general laws of the state wherein the deduction of debts from credits is given, are invalid as not furnishing a valuation in accordance with constitutional requirements. The fact that the deduction of debts from credits has been continuously practiced in Michigan since the adoption of its present constitution, and has been sustained in this and in many other states, leads conclusively to the result that permitting the deduction to one and not to another class, does not apply different rules of valuation or violate the requirement of assessment at cash value.

First Nat. Bk. v. St. Joseph, 46 Mich. 526;

Fayette County Treas. v. People's Bank, 47 Ohio S. 503;

Hubbard v. Brush, 61 Ohio S. 252.

(3.) The result, therefore, is that the deduction of credits to the amount of a person's indebtedness, is an exemption rather than a rule of valuation. The constitution does not prohibit exemptions; it provides that "taxes shall be levied on such property as shall be prescribed by law," and this has been held to permit the selection for, or omission from, assessment of such property as the legislature sees fit.

People v. Auditor General, 7 Mich. 90;

Walcott v. People, 17 Mich. 92;

East Saginaw Salt Mfg. Co. v. East Saginaw, 19 Mich. 292-3;

Board of Supervisors v. Auditor General, 65 Mich. 411;

National Loan & Investment Co. v. Detroit, 136 Mich. 451.

In *National Loan & Investment Co. v. Detroit*, supra, we have a recent adjudication which is conclusive of the ques-

tion here presented. There deductions by way of exemption were permitted in the assessment of the property of building and loan associations which were not permitted to other property. This was claimed to violate the rule of uniformity and the requirement of assessment at cash value, but the court held that by the Michigan constitution, exemptions were permitted and that the deductions were not invalid.

(4.) The result of the system is that credits to the amount of indebtedness are not assessed or taxed. The property assessed is assessed at cash value and in this complies with constitutional requirements, while property not assessed is deducted entirely and does not affect the value applied to the property assessed. Only property assessed is required to be at cash value.

*C. Considerations applicable to both the uniformity and cash value provisions of the state constitution.*

(1.) The contemporaneous history of the adoption of act 173 conclusively fixes the status and construction in this regard of the constitutional amendments. They were designed to permit the passage of just such an act as was passed with exactly the requirements with regard to the taxation or deduction of credits as it contains, and therefore the claim that the statute contravenes these amendments in not permitting deduction of debts from credits (if such deductions are not allowed) is without foundation. The history of the adoption of these amendments will be found in the proclamations and messages, of the Governor, to the legislature. (*Rec. 357, et seq.*)

The legislature of 1899 after considerable agitation throughout the state, passed what was known as the "Atkinson Bill." (*Act 19, 1899; set out in appendix of this brief.*)

This act was in all essential features similar to act 173. It was indirectly declared unconstitutional in *Pin-gree v. Auditor General* (120 Mich. 95), which led to the adoption of the constitutional amendments here in question permitting the taxation of corporations by a state board of assessors. The purpose of those amendments being to permit the passage of just such an act as the Atkinson bill if this act makes the same requirement in regard to the deduction of debts from credits as was made by the Atkinson bill, it is not subject to question as violating in this respect the requirements of the constitution as amended.

(2.) The constitution and statute are to be considered in the light of the history of their adoption. They are to be so construed that they may stand together. Every presumption is in favor of the validity of the statute, and both the statute and constitutional provisions must be restricted or enlarged to permit the statute to stand.

Assume, for the sake of argument, that the constitutional provisions in question are susceptible to two constructions—one being that contended for by complainant, the other that taken by the legislature; the action of the legislature in adopting one of those constructions and enacting a statute carrying it into effect, as thus construed, must be deemed conclusive. The rule is:

“That the acts of a state legislature are to be presumed constitutional until the contrary is shown; and it is only when they manifestly infringe some provisions of the constitution that they can be declared void for that reason. In case of doubt, every presumption, not clearly inconsistent with the language or subject matter, is to be made in favor of the constitutionality of the act. The power of declaring laws unconstitutional should be exercised with extreme caution and

never where serious doubt exists as to the conflict."  
(*People v. Blodgett*, 13 Mich. 151, 161, 162.)

Where a statute has been adopted in carrying into effect a constitutional provision, the constitutional provision and statute must both be so construed and limited or enlarged as to permit the act to stand. This question was passed on in *People v. Blodgett* (13 Mich. 151, 152)), where Judge Christiancy says:

"But it has been strenuously insisted here that these principles can only properly apply when the doubt exists as to the construction of the act, and not where it arises upon the meaning of a constitutional provision; that it is in all cases the duty of the court first to fix and settle the meaning definitely, of the constitution, whatever may be their doubts upon it, and then to examine the act and apply it to the constitution.

Now, it strikes me, as a self-evident proposition, that the question whether a legislative act conflicts with the constitution, must, of necessity, equally involve the examination of both. And that, while it can make but little practical difference which is first examined and construed, the more logical order, when it is claimed that an act is unconstitutional, would be first to determine what the act is. Nor can I perceive any good ground for holding that the doubt which is to restrain us from pronouncing the act unconstitutional, must be confined to the meaning of the act; nor why courts can be bound to settle, fix and declare the meaning of the one, in spite of their doubts, more than of the other. The doubt which is to save the act, is the doubt of the conflict; and this may arise alike from the construction of the one or the other, or both.

In fact, it will be found that in much the greater number of cases where the rules above cited have been



laid down, the doubts arise upon the construction of the constitution, and not upon that of the act which was claimed to conflict with it." (*Cooley on Con. Lim.* 7th. Ed. 225.)

The statute was passed for the express purpose of conforming to and rendering effective, the system intended by the constitutional amendments. The amendments and statute must be construed together as constituting a complete system and what is not expressly stated in the act but necessary to its validity, should be regarded as being imparted to it by the requirements and limitations of the amendments. Upon this point in *First National Bank v. St. Joseph* (46 Mich. 529), it was said:

"The power to tax at all comes from the act of Congress, and it must be obeyed in thorough good faith. Our statute was passed for the express purpose of conforming to the law as existing in 1869, and as substantially re-enacted by the Revised Statutes of 1872. In our judgment the State law and the act of Congress must be read together, and the State officers must act in harmony with the latter. We think there is nothing to prevent this. While we do not ourselves discover any apparent inconsistency in the rule indicated by our statute, yet even if such inconsistency might appear from a strict interpretation of the language, we think that there can be no difficulty in avoiding it in practice if found—as we think it will not be—to result from a construction of the state law by itself."

(3.) The legislature, in enacting act 173, has placed a construction on the constitution; it being its duty to enact statutes to carry into effect this provision it became its duty to determine the limits of its authority thereunder, and its construction, while not entitled to the same weight as a contemporaneous or practical construction acquiesced in for

many years, is entitled to weight and, in case of a doubt, would be controlling; in fact the Michigan supreme court has so held. In *Board of Education v. State Board of Assessors* (133 Mich. 120), the question of the construction of this constitutional provision was before the court which gave effect to the legislative construction, saying:

"But it is urged in behalf of the power exercised by the board in this case that, if the act is subject to this construction, it is in conflict with the constitutional amendment itself. In determining this question, under well settled rules, we are not to ignore the contemporaneous construction placed upon the amendment by the legislature itself."

See also *McPherson v. Secretary of State*, 92 Mich. 377;

146 U. S. 1;

*Fairbank v. U. S.*, 181 U. S. 307, 308;

*Cooley Con. Lim.* (7th Ed.) p. 104.

(4.) The state constitutions are limitations upon and not grants of power to, state legislatures and the legislatures possess all power of legislative character not inhibited by the state constitution or granted to the Federal government. (*Judson on Taxation*, § 431, p. 533.) One of the limitations previous to the amendments of 1900 was that taxation of property should be by an uniform rule. By the amendments it was intended to relax this limitation and broaden the legislative power, permitting it to tax property by another rule, through a state board of assessors.

Two systems of taxation, the specific and by an uniform rule, were previously provided and there were intended to be three after the amendments. The power was granted in general terms and, "where the power is granted in general terms, the power is to be construed as coextensive with the terms, unless some clear restriction upon it is deducible [expressly

or by implication] from the context." (*Cooley Con. Lim.* (7th Ed.), 98.)

Story on Constitution, §§ 424-426.

Restrictions must exist in the constitution in order to limit legislative power and as, when they do exist they will be subject to strict construction (*Brooks v. Hydorn*, 76 Mich. 273, 277), they will not be construed to exist unless clearly so intended.

(5.) Assuming that act 173 does violate the state constitution in not providing for the deduction of debts from credits, the statute is not for that reason void, but the requirement would be incorporated into the statute through the operation of the constitution.

In a case in which a state statute, as construed by the state court, prohibited the deduction of debts from personal property to one class while it permitted it to another class, this court held that the statute was not thereby rendered void but voidable and that in an applicable case where the deduction was claimed, the provision which prohibited the deduction would be invalid and the rest of the statute would be constitutional.

*Supervisors v. Stanley*, 105 U. S. 305;

*Supervisors v. Stanley*, 121 U. S. 535.

(6.) The statute must be regarded as valid though it should have made provision for the deduction of debts from credits unless it appears:

(a) That complainant possessed credits which should have been deducted; and

(b) That the deduction was claimed at the proper time, upon the hearing before the board of review.

There is some proof that the complainant did possess

credits of a character peculiar to it, but there is no claim or proof that the board of assessors was requested to make any deduction or that its attention was called to the inclusion of credits.

(7.) It expressly appears that the board of assessors did not include credits in making its assessments. (*Rec.* 431, 438.) Not having included credits, complainant has no ground of complaint, though the statute might be said to be unconstitutional in not providing for the deduction. The action of the board of directors in not including credits may be taken as a contemporaneous construction of the statute and constitution as intending to give to the property of railroad corporations the same deductions as given to other property, and if necessary to render the act constitutional this construction should be followed by this court.

(*For detailed argument under another head of proposition considered under 5, 6, and 7, see ante pp. 125, 127, 128, 130-132, 139.*)

We submit that the Michigan system for the taxation of railroad companies and the practices under it, are valid and that the judgment of the circuit court should be affirmed.

JOHN E. BIRD,

*Attorney General of Michigan, and*

CHARLES A. BLAIR,

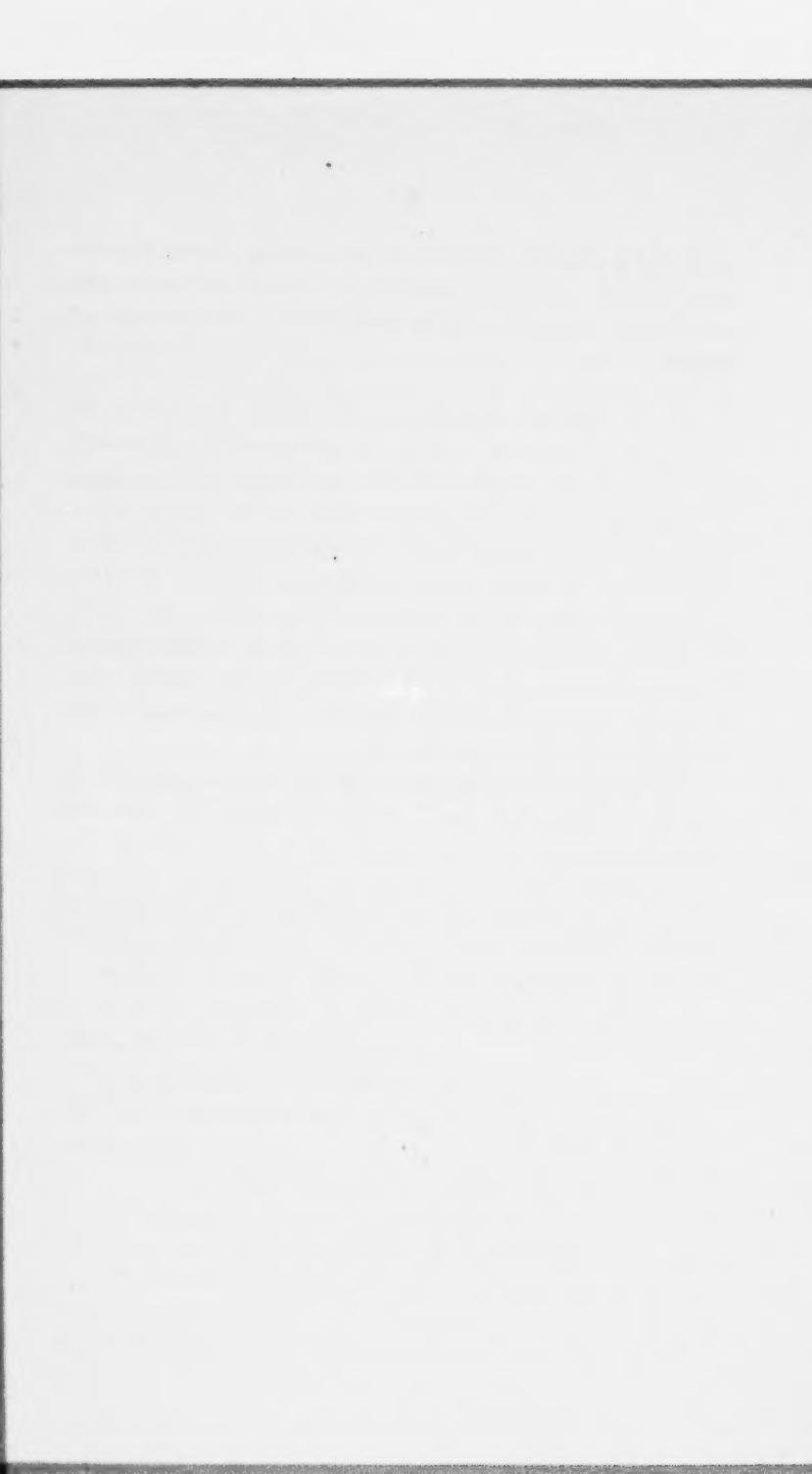
*Solicitors for Defendant.*

LOYAL E. KNAPPEN,

CHARLES E. TOWNSEND,

ROGER IRVING WYKES,

*Of Counsel for Defendant.*



## INDEX TO APPENDIX.

- Constitutional provisions (Art. XIV.) relating to taxation. p. 259
- Act 173 of 1901. The statute for the ad valorem taxation of railroad corporations..... p. 263
- The Atkinson Bill, Act 19 of 1899..... p. 281
- The statute creating the Board of State Tax Commissioners..... p. 293

## CONSTITUTION OF MICHIGAN.

### Article XIV.

#### FINANCE AND TAXATION.

SECTION 1. All specific state taxes, except those received <sup>Specific taxes.</sup> from the mining companies of the upper peninsula, shall be applied in paying interest upon the primary school, university and other educational funds and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such specific taxes shall be added to, and constitute a part of the primary school interest fund. The legislature shall provide for an annual tax, sufficient with <sup>Tax for state expense.</sup> other resources, to pay the estimate of expenses of the state government, the interest of the state debt, and such deficiency as may occur in the resources.

SEC. 2. The legislature shall provide by law a sinking fund <sup>Sinking fund.</sup> of at least twenty thousand dollars a year to commence in eighteen hundred and fifty-two, with compound interest at the rate of six per cent per annum, and an annual increase of at least five per cent, to be applied solely to the payment and extinguishment of the principal of the state debt, other than the amounts due to educational funds, and shall be continued until the extinguishment thereof. The unfunded debt shall not be funded or redeemed at a value exceeding that established by law in one thousand eight hundred and forty-eight.

SEC. 3. The state may contract debts to meet deficits in <sup>State may contract debts.</sup> revenue. Such debts shall not in the aggregate at any one time exceed fifty thousand dollars. The moneys so raised shall be applied to the purposes for which they were obtained, or to the payment of the debts so contracted.

To repel  
invasions.

SEC. 4. The state may contract debts to repel invasion, suppress insurrection, or defend the state in time of war. The money arising from the contracting of such debts shall be applied to the purposes for which it was raised, or to repay such debts.

Money, how  
paid out.

SEC. 5. No money shall be paid out of the treasury except in pursuance of appropriations made by law.

State credit.

SEC. 6. The credit of the state shall not be granted to, or in aid of, any person, association or corporation.

Issue of scrip.

SEC. 7. No scrip, certificate, or other evidence of state indebtedness shall be issued, except for the redemption of stock previously issued, or for such debts as are expressly authorized in this constitution.

State not to  
own stock.

SEC. 8. The state shall not subscribe to, or be interested in, the stock of any company, association or corporation.

Works of  
internal  
improvement.

SEC. 9. The state shall not be a party to, or interested in, any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the state of land or other property: *Provided, however,* That the legislature of the state, by appropriate legislation, may authorize the city of Grand Rapids to issue its bonds for the improvement of the navigation of Grand river.

To collect  
specific tax.

<sup>1</sup> SEC. 10. The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from banking, railroad, plank road and other corporations hereafter created.

<sup>2</sup> SEC. 10. The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value, by a

<sup>1</sup> As previous to amendment of November, 1900.

<sup>2</sup> As amended November, 1900.



state board of assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific state taxes in section one of this article.

<sup>1</sup> SEC. 11. The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law. Uniform rate of taxation.

<sup>2</sup> SEC. 11. The legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes.

SEC. 12. All assessments hereafter authorized shall be on property at its cash value. Assessments.

<sup>1</sup> SEC. 13. The legislature shall provide for an equalization by a state board in the year one thousand eight hundred and fifty-one, and every fifth year thereafter, of assessments on all taxable property except that paying specific taxes. Equalization.

<sup>2</sup> SEC. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a state board, on all

<sup>1</sup> As previous to amendment of November, 1900.

<sup>2</sup> As amended November, 1900.

taxable property, except that taxed under laws passed pursuant to section ten of this article.

Laws imposing  
taxes.

SEC. 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

### Act No. 173, Public Acts 1901.<sup>1</sup>

An Act to provide for the assessment of the property of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes.

*The People of the State of Michigan enact:*

SECTION 1. That the Board of State Tax Commissioners created under the laws of this State, shall ex officio constitute a State Board of Assessors, one of whom shall be elected chairman of said board. Who to constitute state board of assessors.

SEC. 2. The secretary of the Board of State Tax Commissioners shall be ex officio secretary of the State Board of Assessors without extra compensation, and shall keep a record of all its proceedings in addition to such other duties as may be required of him by said board, and shall devote his whole time to the duties of his office. In addition to the secretary said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act: *Provided*, That the compensation paid for such clerical assistance shall not in any case exceed one thousand dollars for each person employed per annum: *Provided further*, That said board may employ such other assistance as may be necessary, with the consent of the Governor and the Board of State Auditors. The compensation of the said secretary and clerks, and all other necessary expenses incurred in carrying out the provisions of this act, shall be allowed by the Board of State Auditors upon proper vouchers approved by the chairman and secretary of the board, and paid by the State Treasurer out of the general fund. Who to be secretary. Duties of. Proviso. Further proviso.

SEC. 3. Said board shall have excess [access] to all books, papers, documents, statements and accounts, on file or of Board to have access to papers, etc.

<sup>1</sup> This act is given as originally passed previous to amendments made in 1903 by act 45 and in 1905 by act 282.

May subpoena  
witnesses.

Compensation  
of witnesses.

Of person  
serving  
subpoena.

Powers of  
board.

record in any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of public records. It shall have like access to all books, papers, documents, statements and accounts, on file or of record in counties, townships and municipalities. It shall have the right to subpoena witnesses, upon a subpoena signed by the chairman of said board and attested by the secretary thereof, delivered to such witnesses, which subpoenas may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment, to be issued by any circuit court in this State, upon proper showing that such witness has been properly subpoenaed, and has refused to obey such subpoena. The person appearing in response to such subpoena shall receive like compensation as is allowed by the statutes of this State to witnesses in the circuit court, to be allowed by the Board of State Auditors upon the presentation of a copy of such subpoena, with the number of days' service and mileage endorsed thereon and approved by a member of said Board of Assessors, or the secretary thereof. The person serving such subpoena shall receive the same compensation now allowed to sheriffs or other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of the board, or by the secretary thereof. It shall have the right to inspect and examine the books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board, and if such corporation, firm or individual refuse to permit said inspection and examination, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall, for each such refusal, neglect or failure, forfeit the sum of five hundred dollars to the State, the sum so forfeited to be recovered in a proper action brought in the name of

the people of the State of Michigan, in any court of competent jurisdiction.

Sec. 4. It shall be the duty of said board to make an annual assessment upon an assessment roll to be prepared by said board, of the property having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, express companies, doing business within this State, car loaning companies, and refrigerator and fast freight line companies, and all other corporations owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State.

Sec. 5. The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: *Provided, however,* That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is

Duties of board.

Term property, what to include.

Proviso.

Term company,  
how applied.

"Property  
situated in state,"  
what to  
include.

Corporations  
to file report  
with board.

other real estate in the several townships or municipalities in which the same may be situate. The term company, corporations or association, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast freight line company, and any and all other corporations subject to taxation under this act. The term "property having a situs in this State" shall include all the property, real and personal, of the corporations enumerated in this act, owned, used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined.

SEC. 6. The several corporations enumerated in this act doing business in this state, shall annually, between the first and thirtieth day of June in each year, under the oath of the president, secretary, treasurer, superintendent or chief officer of such company, make and file with the State Board of Assessors, in such form as said board may provide, upon blanks to be furnished by said board, a statement containing the following facts:

#### RAILROAD, UNION STATION AND DEPOT COMPANIES.

Blanks, what  
to contain.

Name.

Nature, etc.

Location.

Address of  
officers.

The blanks furnished to railroad and union station and depot companies, shall provide for the following information:

First. The name of the company;

Second. The nature of the company, and under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and postoffice address of the chief officer *Manager.*  
or managing agent of the company in Michigan;

Sixth. The number of shares of capital stock; *Number of shares.*

Seventh. The par value and market value, or if there be *Value.*  
no market value, the actual value, of the shares of stock on  
the second Monday of April of the year in which the report  
is made;

Eighth. A detailed statement of the real estate owned by *Statement of*  
the company in Michigan, and where situate, and the value *real estate.*  
thereof;

Ninth. A detailed statement of the personal property, in- *Personal*  
cluding moneys and credits owned by the company in Michi- *property.*  
gan, on the second Monday in April in the year in which the  
report is made, where situate, and the value thereof;<sup>a</sup>

Tenth. The total value of the real estate owned by the *Value of real*  
company situate outside of Michigan; *estate outside*  
*of State.*

Eleventh. The total value of the personal property of the *Personal*  
company situate outside of Michigan; *property.*

Twelfth. The whole length of their lines, and the length of *Length of*  
so much of their lines as is within or is without Michigan, *lines.*  
which lines shall include what said railroad companies con-  
trol and use as owners, lessees, or otherwise;

Thirteenth. A statement of the entire gross receipts of the *Gross receipts.*  
companies, from whatever source derived, for the year end-  
ing the second Monday of April in the year for which the  
report is made;

Fourteenth. Such other facts and information as said *Such facts as*  
board may require, in the form of the returns prescribed by it. *board may*  
*require.*

#### EXPRESS COMPANIES.

The blanks furnished to express companies shall provide *Blanks, what*  
for the following information: *to contain.*

<sup>a</sup> See page 286 for similar provision of Atkinson Bill.

Name.	First. The name of the company;
Nature.	Second. The nature of the company and under the laws of what state or country organized;
Location.	Third. The location of its principal office;
Address of officers.	Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;
Manager.	Fifth. The name and postoffice address of the chief officer or managing agent of the company in the State of Michigan;
Number of shares.	Sixth. The number of shares of capital stock, (a) authorized, (b) issued;
Value.	Seventh. The par value and market value, or if there be no market value, the actual value of the shares of stock, together with the total amount of bonded indebtedness, on the second Monday of April of the year for which the report is made;
Value of real estate in State.	Eighth. The situation, income and value in detail of its real estate in this State;
Outside.	Ninth. The total income from and cash value of all its real estate situated outside of this State;
Personal property in State.	Tenth. A full and correct inventory, at the true cash value, of its personal property, including moneys and credits, within this State;
Outside.	Eleventh. The true cash value of all its personal property, including money and credits without this State;
Names, etc., of lines.	Twelfth. The whole length and names of railroad lines and water and stage routes over which it did business, and separately, in detail, the portions of such lines and routes within this State, and the portion of such routes over navigable waters of the United States within this State;
As board may require.	Thirteenth. Such other facts and information as may be deemed necessary by the State Board of Assessors, or any member thereof, to the proper assessment of the property of such company.



CAR LOANING, STOCK CAR, REFRIGERATOR AND FAST FREIGHT LINE  
COMPANIES, AND OTHER CAR COMPANIES.

The blanks furnished to car loaning, stock car, refrigerator and fast freight line companies shall provide for the following information:

- First. The corporate name of the company; Name.
  - Second. The nature of the business of said company, and under the laws of what state or country organized; Nature.
  - Third. The location of its principal office; Location.
  - Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager; Names of officers.
  - Fifth. The location of its principal office in the State of Michigan, together with the name and address of the chief officer or managing agent of the company in Michigan; Location of principal office in State.  
Name of manager.
  - Sixth. The total number of cars and rolling stock of any such corporation run over or operated upon any line or lines of railroad within this State each day during the entire year preceding the date of making and filing such report; Number of cars.
  - Seventh. The cost of construction of each of said cars; Cost of each.
  - Eighth. The length of time the same has been in service; Time in service.
  - Ninth. The cash value of each of said cars so operated and run in this State, at the time of making and filing such report; Cash value of each.
  - Tenth. And such other and additional information as may be deemed necessary by said board, or any member thereof, to the proper assessment of the cars of such company in this State in accordance with the provisions of this act and to the performance of the duties imposed upon it hereby. As board may require.
- SEC. 7. Blanks for making the statements provided for in section six shall be furnished to such companies on making application to said board: *Provided*, That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to

Blanks, when furnished.

Proviso.

Procedure  
when company  
refuses to  
make  
statement.

Penalty.

When board  
to prepare  
assessment  
roll.

Board may  
inspect  
property.

True cash  
value, how  
determined.

other State officers. In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the board shall inform itself as best it may on the matters necessary to be known, in order to discharge its duties with respect to the assessment of the property of such company. Any company which shall refuse or neglect to make the report required by this act within the time specified, shall be subject to a penalty of five hundred dollars for each day of the continuance of such neglect or refusal to file said report, to be recovered in a proper action brought in the name of the people of the State of Michigan in any court of competent jurisdiction.

SEC. 8. Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of December in each year, it shall be the duty of the said State Board of Assessors, to prepare an assessment roll as provided in section four of this act, upon which they shall assess at the true cash value on the second Monday of April of the year in which the assessment is made, all the property of the companies herein enumerated subject to taxation under this act, which said assessment shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and the true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of such companies filed in the office of any officer of this State, and such other evidence as may be obtainable bearing thereon. In determining the true cash value of the property of railroad and union station and depot companies which own, lease or operate lines partly within and partly without this State, the said board shall be guided, in ascertaining the property sub-

ject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without this State. In determining the cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebtedness of such express company. From the amount so obtained and determined, said board shall deduct the actual value of all real estate owned by it as ascertained by said board, and the actual value of all its personal property which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: The said board shall then divide the amount as obtained above by the total number of miles of railroad, stage, water and other routes over which the company did business, to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this State, exclusive, however, of the number of miles of water routes over the navigable waters of the United States within this State, to which result shall be added the value of all real estate owned by such express company in this State, as determined by said board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company subject to assessment and taxation in this State. In ascertaining the cash value of the property of car loaning, stock car, refrigerator, fast freight line and other car companies subject to taxation under this act, they shall ascertain the average number of cars used in this State during the year preceding the date of the filing of the report mentioned in the preceding section, such average to be determined by dividing the total number of cars so used or operated within this State during said year by the total

Of express  
companies.

Actual.

Assessment,  
how deter-  
mined.

Cash value of  
car loaning,  
etc., how  
obtained.

Total valuation, how determined.

number of days on which said cars were so used or operated within this State; and they shall also ascertain the average cash value of such average number of cars, and from said data the total valuation shall be determined and shall be the assessment against the property of said corporation.

What descriptions roll to contain.

SEC. 9. Upon said assessment roll, after the names of each of the companies assessed thereon, shall be placed a general description of the properties of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. In the case of railroad, union station and depot companies, such general description may be as follows: "Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a State Board of Assessors." In the case of car loaning, stock car, refrigerator and fast freight line and other car companies, the following general description may be used: "Cars subject to taxation by a State Board of Assessors."

Railroad companies, etc.

Car loaning companies, etc.

Express.

In the case of express companies, the following general description may be used: "Property subject to taxation by a State Board of Assessors." In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of said companies so assessed.

When board to be in session.

SEC. 10. On the third Monday of December in each year, it shall be the duty of the State Board of Assessors to meet at the State capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application or on its own motion, correct the

May correct roll.

assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal, and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll, may subpoena witnesses as provided in section three of this act and have such hearing as may be deemed necessary. In case it shall appear or be made to appear to the members of said board, acting in review for assessment purposes, that the property of any corporation subject to taxation under the provisions of this act shall have been omitted from said assessment roll, it shall place the same thereon and make the assessment thereof as required in sections eight and nine of this act: *Provided*, That any such assessment shall take place in time to allow five full days for the review of the same before the expiration of the time herein provided for the completion of the review. After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided. After said board shall have completed the review of said roll, a majority thereof shall certify under their hands officially, and spread on said roll, a certificate to the effect that the same has been acted upon and reviewed in accordance with law, which certificate shall state all the alterations, changes, corrections and additions made in or to the assessment or valuation of the property appearing on said roll.

May place  
omitted prop-  
erty on roll.

Proviso.

Final  
valuation.

When board to  
certify to roll.

SEC. 11. It shall be the duty of the county clerk in each county in this State, as soon as possible after the equalization of the board of supervisors of his county of the assessment rolls of the several municipalities therein, and not later

County clerk  
to make report,  
what to con-  
tain.

than the first day of November in each year, to make a report, duly certified, to the State Board of Assessors, of the record of such equalization and of the record required to be made under section thirty-seven of the general tax law, being section three thousand eight hundred sixty of the compiled laws of eighteen hundred ninety-seven, as appears upon the records of such board of supervisors, which report shall, among other things, contain a statement of the amount of ad valorem taxes to be raised in the several municipalities of such county for State, county, municipal, township, school, and other purposes, and a statement of the aggregate valuation of the property in each of said several municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It shall be the duty of the supervisor or other assessing officer of cities and villages in this state and governed by special charters, which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purposes of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make, within the time above limited, a properly certified report to the State Board of Assessors of all ad valorem taxes raised in any of said municipalities, which have not been reported to the board of supervisors for the purposes of equalization and review. In case any county clerk or any supervisor or assessing officer shall neglect or fail to make the report by this section required, within the time limited, the said State Board of Assessors shall inspect and examine, or cause an inspection and examination of the records of said board of supervisors, or in cities affected by this section, an examination of the records of the proper officer, for the purpose of procuring the information required for the purpose of arriving at the average rate of taxation in this State; and the said board, in addition thereto, may require such reports

Assessors, etc.,  
to make.

In case officers  
fail to report.

on blanks which it shall prepare and furnish therefor, from all county, State and municipal officers, as it shall deem necessary to the accomplishment of the purpose of this act. Any county clerk, supervisor or assessing officer who shall fail to make the report required by this section shall be subject to a penalty of one hundred dollars, to be recovered in a proper action in the name of the people of the State of Michigan, in any court of competent jurisdiction.

SEC. 12. As soon as the reports required by the preceding section to be filed have been filed, or the information therein required to be procured shall have been procured, and not later than the fifteenth day of December in each year, the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined:

Board to ascertain average tax.

SEC. 13. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties. After the completion of said tax roll, and prior to the first day of February in each year, the said board shall attach thereto a certificate signed by the members of the board, or a majority thereof, which shall be as follows: "We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast freight line and other car companies liable to be taxed in this state, according to our best information, and that we have estimated the same at what we believe to be the true

Amount taxed to be extended on roll.

Certificate to be attached.

What to contain.



To whom roll delivered.	cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for state, county, township, school, municipal and other purposes, levied through the state during the present year, as determined by us.
Taxes, when payable.	The said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer. The said taxes shall be payable on the first day of March following the assessment and levy thereof, and shall be in lieu of all taxes for state and local purposes, not including special assessments on property particularly benefited, made in any
When to bear interest, rate.	county, city, village or township. All taxes not paid before the first day of April in the year in which the same are payable shall bear interest at the rate of one per cent per month thereafter. The taxes so extended against said companies shall become forthwith a debt due from each of said
To become lien.	companies to the state, and shall constitute a lien upon all the property of said companies, real, personal and mixed from the time of the extension until the payment thereof, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property or such portion thereof as may be necessary to satisfy the same, as hereinbefore
Lien how enforced.	provided. The State Board of Assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the State Board, or a majority of them, commanding the Auditor General to collect the several sums mentioned in the last column of such roll, and being the sum for which the said company was assessed and was liable to pay for a tax upon its property under the provisions of this act for the purposes pro-
Warrant to be annexed to roll.	vided for in this act; and the said warrant shall authorize and command the auditor general, in case any corporation
Collections by distress etc., how authorized.	



named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of such sale as provided for in the general laws of this state for the sale of property seized for taxes and offered for sale: *Provided*, Proviso. He may bring an action in the name of the people of the State of Michigan in any court of competent jurisdiction in the State of Michigan, or in any other state, for the enforcement of said lien, and upon recovery of judgment or decree therein the same may be collected by execution, levy and sale, as in other cases, upon judgments in courts of record.

Sec. 14. If any court of competent jurisdiction shall adjudge that any tax levied under the provisions of this act is illegal on account of any irregularity or informality in the determination of the average rate of taxation required to be ascertained and determined by said State Board of Assessors, or for the reason that such average rate has not been ascertained and determined according to law, it shall be the duty of the said State Board of Assessors, whether any part of the taxes assessed and levied have been paid or not, to redetermine and reascertain the average rate of taxation throughout the state in accordance with law, and when such redetermination and reascertainment has been had, to make a duplicate of the original assessment roll and to extend the taxes thereon according to such redetermined and reascertained average rate, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as an original assessment made in accordance with law. All proceedings on the redetermination and reascertainment of such average rate and for the extension and collection of taxes upon said duplicate assessment roll shall be conducted in the method originally provided for, so far as may be. When-

Procedure when tax judged illegal.

When certain  
payments  
applied on  
reassessment.

ever any sum or part thereof levied upon any property subject to taxation under this act so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment upon said property, and the reassessment to that extent shall be deemed to be satisfied.

When tax not  
to be held  
invalid.

SEC. 15. No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any court of this state on account of any irregularity in any assessment or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this state is in accordance with the constitution and statutes of this state.

Taxes, how  
applied.

SEC. 16. All taxes collected under this act shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the state debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund; and such taxes as are collected under the provisions of this act shall be treated and disbursed as specific taxes are now treated and disbursed: *Provided, however,* That if any of the corporations, companies or associations herein named were not paying specific taxes to this state on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the state.

Proviso.

When first  
assessment to  
be made.

SEC. 17. The first assessment under this act shall be made as herein required in the year nineteen hundred and two.

Nothing herein contained shall be deemed a waiver or affect the collection of the specific taxes required to be paid by the companies hereby affected, on the first day of July in the year nineteen hundred and one, and on the first day of July in the year nineteen hundred and two, under the general laws upon the property or business of such companies operated within this state. The existing laws providing for the collection of such specific taxes shall be continued in force until the collection and payment of all taxed levied thereunder for the year nineteen hundred and one and previous years.

Time existing laws to continue in force.

SEC. 18. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each.

Penalty for wilfully making wrong assessment.

SEC. 19. If any person, company, association or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any member of said board, during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the state the sum of ten thousand dollars for each such offense, to be recovered in an action in the name of the people of the State of Michigan, in any court of competent jurisdiction. And the recovery of such fine under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

Penalty for offering board gratuities, etc.

SEC. 20. All other acts or parts of acts, whether contained in any acts for the incorporation of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, or in any other law

Repealing clause.

Proviso.

of this State, so far as such acts or parts of acts are inconsistent with this act, and no further, are hereby repealed, except as herein expressly stated: *Provided however*, That all rights which the State now has under any of said acts, for taxes or penalties, shall not in any way be affected by this act, and shall not constitute a bar to any prosecution or recovery on account of such taxes or penalties.

Approved May 27, 1901.

**"Atkinson Bill," Act 19 of 1890.**

See *Pingree v. Auditor General*, 120 Mich. 95.

An Act to provide for the assessment and levy of taxes upon the property of Railroad Companies, Express Companies, Telegraph Companies and Telephonic Companies and the collection thereof, and the designation and election of a State Board of Assessors to make such assessment and levy, and defining the duties of such board, and the compensation of its members, and to repeal all other acts or parts of acts whether in the acts for incorporation of Union Railroad Station and Depot grounds, or any other law of this State, so far as such acts or parts of acts are inconsistent with this act, and no further, and to apply the taxes assessed and collected under this act to pay "the interest upon the primary school, university and other educational funds and the interest and principal of the State debt, in the order herein recited until the extinguishment of the State debt, other than amounts due to education funds, when such taxes to be collected under this act be added to, and constitute a part of the primary school interest fund."

*The People of the State of Michigan enact:*

SECTION 1. It shall be the duty of the Governor, by and with the advice and consent of the senate, within five days after this act shall have been approved by the Governor, to appoint three resident freeholders of this State, who shall be duly qualified electors thereof, who shall constitute a State Board of Assessors, with powers and duties as prescribed under the provisions of this act. The Auditor General shall always, during his term of office, be president of said board, but shall have no power except as presiding officer of said board, unless expressly given herein. The persons so ap-

Governor to  
appoint board  
of assessors.

Auditor Gen-  
eral president  
of board.

- Term of office. pointed shall hold their offices for the term of two years from and after January fifteenth, eighteen hundred ninety-nine, or until their successors shall be appointed and have qualified.
- Appointment of successors. At the expiration of the terms of office of the members of said board their successors in office, so long as this act shall remain in force, shall be appointed by the Governor by and with the
- Appointments when to be made. advice and consent of the senate. All appointments which are provided to be made by the Governor by this section of this act shall be made while the legislature is in session, and not at any other time, except in cases where vacancies in office shall occur otherwise than by expiration of the term of office of any member of said board. In case of vacancy in office occurring otherwise than by expiration of the term the Governor shall have power to appoint to fill such vacancy at any time, and the persons so appointed shall hold office
- Vacancy, how filled. until the next meeting of the legislature after their appointment and no longer.
- Term of office. SEC. 2. Said board shall elect a secretary at a salary not to exceed eighteen hundred dollars per annum. The secretary so appointed shall hold his office during the pleasure of
- Election of secretary. said board and shall keep a record of all the proceedings of said board, which record with all other papers or proceedings of said board shall be a part of the records of the Auditor General's office, and of which the Auditor General shall be the lawful custodian. The secretary shall devote all his time to
- Term of office. the duties of his office, and when said board is not in session shall perform such duties as may have been assigned him by said board or as he may be directed to perform by the Auditor General.
- Duties. SEC. 3. The members of said board, and the secretary, shall take and subscribe the constitutional oath of office to be filed with the Secretary of State.
- Auditor General custodian board records. SEC. 4. Said board shall hold its session at the office of the Auditor General. It shall have access to all books, papers, documents, statements and accounts on file or of record in
- Futher duties of secretary. the Auditor General. It shall have access to all books, papers, documents, statements and accounts on file or of record in
- Place of meeting, Right of access to State records.

any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. It shall make an assessment roll each year containing a list of all property by it assessed, which assessment roll shall be filed with the Auditor General and be open to inspection like the other files and records in his office. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of said board, and attested by the secretary thereof, directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the State upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The persons serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board; and if any corporation, firm or individual refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall forfeit the sum of five hundred dollars to the State. The sum so forfeited may be recovered in a proper action brought in the name of the people of the State of Michigan in any court of competent jurisdiction.

To county, township and municipal records.

Annual assessment roll.

Right to subpoena.

Compulsory attendance of witnesses.

Compensation for serving subpoena.

Power to examine witnesses.

Right to examine books, etc., of one to be assessed.

Refusal to permit examination. Failure to appear.

Penalty therefor.

Time of meeting. Assessments, when to be made.

Sec. 5. Said board shall meet on the first Monday in September in each year, and between that time and the first Monday in November of each year assess all the property in this State of railroad companies, express companies, telegraph

Inspection of property.

Consideration of companies' reports and returns.

Aggregate taxes raised in State, to be recorded.

Returns of state, county and municipal officers.

Average rate, how determined.

Municipalities, what to include.

To tax at average rate determined.

Tax to be paid, how recorded.

companies and telephone companies now organized or hereafter organized and doing business in this State, under any law of this State or any state or country. Said board may inspect all the property belonging to said companies, for the purpose of arriving at the true cash value thereof, for the purposes of assessment and taxation. Said board may, for the same purpose, take into consideration the reports and returns of said companies on file in the office of any officer in this State, the value of the stock of such corporation as listed on the stock exchange of New York and Boston, together with such other evidence as it may be able to obtain bearing upon the true cash value of the property of said companies in this State.

SEC. 6. Said board shall determine and enter upon its record the aggregate taxes raised in the whole State, for State, county and municipal purposes, for the current year, not including special assessments on property particularly benefited. All State, county and municipal officers shall make such returns to said board as it shall require upon blanks to be furnished such officers by the Auditor General, so as to enable said board to ascertain with exactness the aggregate taxes as above provided. Said board shall determine the average rate of State, county and municipal taxes throughout the State by dividing aggregate taxes for the current year, as ascertained under this section, by an aggregate sum to be determined by adding to the total value of all property assessed under this act the equalized value of all property assessed in the State as fixed by the State Board of Equalization at its last meeting. Municipalities within the meaning of this act shall be construed to include school districts as well as cities, villages and other municipalities.

SEC. 7. Said board shall tax the property of the several companies as assessed by it, at the average rate of taxation as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assess-



ment roll opposite the descriptions of their respective properties, and the tax so extended shall be paid to the State Treasurer by said companies respectively on or before the first Monday in January following the assessment and levy aforesaid, which tax when so assessed and levied shall be in lieu of all other taxes for State and local purposes, not including special assessments on property particularly benefited made in any county, city, village or township. The taxes so extended against said companies shall constitute a lien upon all the property of said companies, real, personal and mixed from the time of the extension of said taxes until the payment thereof, which lien may be enforced by the State like other liens in any court of competent jurisdiction.

When to be paid.

Tax, what to include.

Taxes a lien on company's property.

Enforcement of lien.

SEC. 8. Any person or persons, joint stock company or corporation owning and operating a railroad in this State, or owning and operating a union railroad station and depot in this State, whether under special charter or the general railroad law or the act to authorize the incorporation of union railroad stations and depots, or any other act of this State or any other state or country, shall be deemed a railroad company within the meaning of this act.

Railroad company, definition of.

SEC. 9. Any person or persons, joint stock association or corporation, wherever organized or incorporated or wherever residing, engaged in the business of conveying to, from or through this State, or any part thereof, money, packages, gold, silver, plate, or other articles by express, not including the ordinary lines of transportation of merchandise and property in this State, shall be deemed an express company within the meaning of this act.

Express company, how defined.

SEC. 10. Any person or persons, joint stock association or corporation, wherever organized or incorporated or wherever residing, engaged in the business of transmitting to, from, through or in the State, telegraphic messages, shall be deemed a telegraph company within the meaning of this act.

Telegraph company, how defined.

SEC. 11. Any person or persons, joint stock association or

Telephone company, definition of.

corporation, wherever organized or incorporated or wherever residing, engaged in the business of transmitting to, from or through or in this State telephonic messages, shall be deemed a telephone company within the meaning of this act.

Annual statement under oath to be filed with the Auditor General.

SEC. 12. Every railroad, express, telegraph and telephone company defined in the preceding sections, doing business in this State, shall annually, between the first and thirty-first days of May in each year, under the oath of such person or person, or under the oath of the president, secretary, treasurer, superintendent or chief officer of such association or corporation, make and file with the Auditor General for the use of said board, in such form as the Auditor General may prescribe, a statement containing the following facts:

What to contain.

First, The name of the company;

Second, The nature of the company, whether a person or persons, an association or corporation, and under the laws of what state or county organized;

Third, The location of its principal office;

Fourth, The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth, The name and postoffice address of the chief officer or managing agent of the company in Michigan;

Sixth, The number of shares of the capital stock;

Seventh, The par value and market value, or if there be no market value, the actual value of the shares of stock on the first day of May;

Eighth, A detailed statement of the real estate owned by the company in Michigan, where situated, and the value thereof as assessed, if it is assessed for taxation under any other law;

Ninth, A full and correct inventory of the personal property including moneys and credits owned by the company, in Michigan, on the first day of May, where situate and the value thereof;

Tenth, The total value of the real estate owned by the company, situate outside of Michigan;

Eleventh, The total value of the personal property of the company and situate outside of Michigan;

Twelfth, In case of railroad, telegraph and telephone companies, the whole length of their lines and the length of so much of their lines as is without and as is within Michigan, which lines shall include what said railroad, telegraph and telephone companies control and use as owners, lessees, or otherwise;

Thirteenth, A statement of the entire gross receipts of the company, from whatever source derived, for the year ending the first day of May, from business wherever done;

Fourteenth, A statement of the gross receipts for the year ending the first day of May from whatever source derived, and the total gross receipts of the company for such period in this State;

Fifteenth, In case of express companies, the whole length of the lines of rail and water routes over which the company did business on the first day of May, and the length of so much of said lines of land and water transportation as is without and is within this State, naming the lines within this State, excluding all ocean lines from such statement;

Sixteenth, Such other facts and information as said board may require, in the form of the returns prescribed by the Auditor General. Blanks for making the above statement shall be furnished to such companies on application to the secretary of said board: *Provided, however,* That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other State officers. *Provided further,* That the report herein required to be made for the year eighteen hundred ninety-nine shall be made on or before the first day of September, eighteen hundred ninety-nine.

SEC. 13. The franchises of the companies assessed under

Franchises,  
how con-  
sidered.

this act shall be considered in connection with the other things mentioned in section five of this act in determining the value of the property to be assessed, and in case any of said railroad companies own and operate railroads partly within and partly without this State, said board shall, for the purpose of taxation only, assess said company for the fair proportion which its property in this State bears to its entire property, and to ascertain such cash value the earning capacity of such corporate property may be considered.

Assessment,  
how made.

SEC. 14. Said board shall ascertain and assess the value of all property of railroad companies, express companies, telegraph and telephone companies doing business in this State at its true cash value, and in determining the property for such purposes in this State to be taxed within the State and assessed as herein provided, the board shall be guided by the value of said property as determined by the entire capital stock of said companies and such other evidence as will enable said board to arrive at the true cash value of the entire property of said companies within this State in the proportion which the same bears to the entire property of said company, as determined by the value of the capital stock thereof and such other evidence.

Action of  
board on fail-  
ure or refusal  
to make state-  
ment.

SEC. 15. In case any company fails or refuses to make the statement required by this act, or to furnish any information requested, the board shall inform itself as best it may on the matters necessary to be known in order to discharge its duties with respect to the assessment of the property of said company.

Right of those  
interested to  
appear before  
board.

SEC. 16. At any time after the meeting of said board in September as above provided, and before the final assessment of the property of any such company is determined, any company or person interested shall have the right, on written application, to appear before said board and be heard as to the valuation of the property of said company, and said board may, on such application or on its own motion, correct the

assessment or valuation of the property of any such company or person in such manner as will in its judgment make the valuation thereof just and equal.

SEC. 17. In case any company required to file a statement under the provisions of this act fails to make and file such statement on or before the thirty-first day of May, or in the year eighteen hundred ninety-nine on or before the first day of September, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the day prescribed for the making of such report, to file such statement, such penalty to be paid to the State and to be recovered in an action in the name of the people of the State of Michigan in any court of competent jurisdiction.

Penalty for failure to make and file statement.

SEC. 18. Said board shall not include in its assessment against said companies any property already assessed upon its value for taxation under any other law in this State.

Property exempt.

SEC. 19. All taxes collected under this act shall be applied in paying the interest on the primary school, university and other educational funds, and the interest and principal of the State debt, in the order recited, until the extinguishment of the State debt other than the accounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund, and such taxes as are collected under the provisions of this act shall be treated and disbursed as other specific taxes are now treated and disbursed.

Application of taxes collected.

SEC. 20. It shall be the duty of said board to make and prepare an assessment roll setting forth the valuation and assessment and the taxes assessed upon all property to be assessed and taxed under the provisions of this act, and to file the same with the Auditor General of the State on or before the tenth day of December in each and every year. And it shall be the duty of the Auditor General to notify the persons or corporations so assessed to pay the taxes assessed against

Board to make and prepare assessment roll.

How filed.

Duty of Auditor General.

them respectively to the Treasurer of the State of Michigan on or before the first Monday of January next succeeding the date of said notice.

Refusal or neglect to pay tax. Penalty therefor.

SEC. 21. If said corporation shall neglect or refuse to pay such tax on or before February first, two per cent a month shall be added to such tax as a penalty and the Attorney General upon request of the Governor shall commence suit or proceedings in any court of competent jurisdiction to collect the tax and penalty by foreclosing the lien upon the real estate or corporate interests assessed.

Compensation of board.

SEC. 22. The appointed members of the said board shall receive an annual salary of two thousand five hundred dollars, and shall devote their whole time to the discharge of the duties of their office (and they shall also receive their necessary expenses in the performance of their duties) both to be audited and allowed by the Board of Auditors and paid by the State Treasurer out of the general fund.

Certificate to be attached to assessment roll.

SEC. 23. Said board shall attach to the assessment roll herein provided for a certificate to be signed by the members of said board, or the majority of said members who have taken part in the assessment of the property of said companies in the following form:

We do hereby certify that we have set down in the above assessment roll all the property of all the railroad companies, express companies, telegraph companies and telephone companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be true cash value thereof, and that we have assessed the taxes on the same at the average rate of taxes for State, municipal and local purposes levied throughout the State during the present year, not including special assessments for improvements assessed against the properties benefited in counties, cities, villages or townships.

"Cash value," meaning of.

SEC. 24. The words "cash value" wherever used in this act shall be held to mean the usual selling price at the place

where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained at private sale and not at forced or auction sale.

SEC. 25. Whenever property is sold for taxes under this act, and such property is incapable of division, it may be sold as an entirety, and if there is a surplus arising from the sale of such property the same shall be turned over to the person or corporation against whom the taxes for which it is sold shall have been assessed. And if said surplus is claimed by any other person or corporation than the person or corporation for whose tax such property is sold, and such claim shall be contested, either of the contestants may prosecute an action against the other as for money had and received, and in such action the right of the parties to such surplus shall be determined. All the money arising from such sale, less the fees of the officer making such sale, shall in the first instance be paid to the State Treasurer, and upon presentation to such treasurer of a certified copy of the final judgment rendered in such action he shall pay over such surplus to the party recovering such judgment.

Property, sale of, for taxes.

SEC. 26. If said board shall willfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each.

Willful incorrect assessment a misdemeanor.

Penalty.

SEC. 27. If any person or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any members of said board during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the State the sum of ten thousand dollars for every such offense, to be recovered in an action in the name of the people of the State of Michigan in any court

Gratuities, Forfeiture by those offering.

of competent jurisdiction. And the recovery of such sum under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

**Acts repealed.** Sec. 28. All other acts or parts of acts, whether contained in acts for the incorporation of union railroad stations and depot companies, or in any other law of this State so far as such acts or parts of acts are inconsistent with this act and no further, are hereby repealed: Provided, however, That all rights which the State has now under any of said acts for taxes or penalties shall not be in any way affected by this act and shall not constitute a bar against any prosecution or recovery on account of such taxes or penalties.

**Previous.**

This act is ordered to take immediate effect.

Approved March 15, 1899.



**THE STATUTE CREATING THE  
BOARD OF STATE TAX COMMISSIONERS.**

(ACT 154, PUBLIC ACTS 1899.)

**Sec. 21.** In every case when any person or member of any firm or officer of any corporation shall wilfully neglect or refuse to make out and deliver a true and correct sworn statement, under oath, administered by the supervisor or other assessing officer or members of the board of state tax commissioners herein provided for or other officers or shall answer falsely or refuse to answer questions concerning his property or property under his control, as required by this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court. And it shall be the duty of the supervisor, assessing officer, and each member of the board of state tax commissioners whenever he is satisfied that any person liable to make such assessing statement is justly liable to such penalty, to report the case to the prosecuting attorney of the county and make proper complaint for such prosecution.

*Wilful neglect to make statement, etc.*

*Penalty.*

*Complaint, who to make.*

*Certain persons authorized to secure testimony.*

**Sec. 22.** If the supervisor or assessing officer or a member of the board of state tax commissioners shall be satisfied that any statement so made is incorrect, or if, by reason of absence or other cause, said sworn statement cannot be obtained from the person, firm or corporation whose property is so assessed, said supervisor, assessing officer or any member of the board of state tax commissioners is hereby authorized and required to examine, on oath, to be administered by any of them any other person or persons whom he may have good reason to believe, and does believe has knowledge of the amount or value of any property owned, held or controlled by such per-

son so neglecting or refusing or omitting to be examined or to furnish such statement, and such supervisor or assessing officer is hereby authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just.

Governor to  
appoint board  
of tax com-  
missioners.

<sup>1</sup> Sec. 145. It shall be the duty of the governor, by and with the advice and consent of the senate, within five days after this act shall have been approved by the governor, to appoint two resident freeholders of this state, who shall be duly qualified electors thereof, and who, together with the three persons now constituting the board of state tax commissioners, shall hereafter constitute a board of state tax commissioners with powers and duties as prescribed under the provisions of this act, one of whom so appointed shall hold office

Term of office.

until the thirty-first day of December, nineteen hundred four, and one of whom so appointed shall hold office until the thirty-first day of December, nineteen hundred six, and until their successors shall have been appointed and shall have qualified. Thereafter the successors of each member of said board of state tax commissioners shall be appointed by the governor, and shall hold office for the term of six years, and until their successors shall have been appointed and qualified. The persons who now constitute the board of state tax commissioners under appointments heretofore made shall continue to hold their office until the expiration of their respective terms. At the expiration of the terms of office of the members of said board, their successors in office, so long as this act shall remain in force, shall be appointed by the governor, by and with the advice and consent of the senate. All appointments which are provided to be made by the governor under this section of this act shall be made while the legislature is in session, and not at any other time, except in

When to be  
appointed.

<sup>1</sup> As amended by act 174, of 1901.

cases where a vacancy in office shall occur otherwise than by the expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the governor shall have power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the legislature after such appointment, and no longer.

Sec. 146. Said board shall elect a secretary at a salary not to exceed two thousand dollars per annum. The person so elected shall hold his office during the pleasure of said board, and shall keep a record of all the proceedings of said board, which records with all other papers or proceedings of said board shall be a part of the records of the auditor general's office, and of which the auditor general shall be the lawful custodian. The secretary shall devote all his time to the duties of his office, and when said board is not in session, shall perform such duties as may have been assigned him by said board.

Sec. 148. Regular sessions of said board shall be held at the office of said board at the capitol, to be furnished by the board of state auditors. The said board and the members thereof, shall have access to all books, papers, documents, statements and accounts on file or of record of any of the departments of state, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of the said board, and attested by the secretary thereof, directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this state, and the attendance of witnesses may be

Vacancy, how filled.

Secretary.

Compensation.

Term of office.

Duties, etc.

Office of, where located.

May subpoena witnesses.

<sup>1</sup> As amended by act 174, of 1901.

Shall examine  
under oath.

Powers of  
board.

Meetings,  
when held.

Special  
meeting.

Duties of  
board.  
Supervision  
over assessing  
officers.

compelled by attachment to be issued by any circuit court in the state upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to examine books, papers or accounts of any corporation firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this state, and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the state prison for a period not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 149. Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. The chairman may call special sessions of the board whenever and wherever in the state he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

SEC. 150. It shall be the duty of said board:

1. To have and exercise general supervision over the supervisors and other assessing officers of this state, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value.

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the attorney general or any prosecuting attorney in the state to assist said board.

To confer with and advise assessing officer.

3. To receive complaints as to property liable to taxation that has not been assessed, or has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if found to exist.

Complaints to be received.

4. To see that each county in the state be visited by at least one member of the board as often as once each year, to the end that all complaints concerning the law may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

Members to visit counties.

5. To require from any officer in this state, on forms prescribed by said board of state tax commissioners such annual or other reports as shall enable said board of state tax commissioners to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the state under this act; the amount of taxes assessed, collected and returned delinquent, and such other matter as the board may require, to the end that it may have complete and statistical information as to the practical operation of this act.

Statistical information to be furnished by officers.

6. To inquire into and ascertain the valuation of the properties of corporations paying specific taxes under any of the laws of this state, and to ascertain the actual rate of taxation

Corporations to furnish reports.

as based upon the valuation of said properties that is being paid by said corporations, and to this end said board shall require reports from, and make investigations, as to the properties of such corporations in the same manner and to the same extent as if said corporations were paying taxes under this act.

To make reports to legislature relative to revenue laws.

7. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by published reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the legislature, at each regular session thereof, such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

Relative to taxes collected.

8. To further report to the legislature at each regular session thereof, or at such other times as the legislature may direct, the whole amount of taxes collected in the state for all purposes, classified as to state, county and township and municipal purposes, with the sources thereof; the amount lost; the causes of the loss; the proceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

Relative to valuation of properties.

9. To further report to the legislature at the beginning of the regular sessions, specifically, the true valuation of the properties of corporations paying specific taxes and the rate of taxation actually paid on said valuation and the true valuation of all other properties of the state and the rate of taxation the same are paying, to the end that the legislature shall have the information necessary to rearrange the rate or system of taxation on said properties, so that all taxable properties of the state may be taxed uniformly.

10. To be present at each meeting of the state board of

equalization and furnish such information as said board may require, and that may assist said board in the performance of the duties imposed upon it by law. Members to attend meetings of board.

SEC. 151. The board of state tax commissioners shall, on or before the fifteenth day of December in each year, make an annual report to the governor of this state, setting forth the workings of said commission during the preceding year, and containing the findings and recommendations of said commission in relation to all matters of taxation. The board of state auditors shall cause five thousand copies of said annual report to be printed on or before the fifteenth day of January succeeding the making of said report. Three hundred copies of said report shall be placed at the disposal of the state librarian for distribution and exchange. Annual report to Governor.

SEC. 152. After the various assessments rolls required to be made under this act shall have been passed upon by the several boards of review, and prior to the time fixed for equalization and apportionment of state and county taxes, the said several assessment rolls in the state shall be subject to inspection by said board of state tax commissioners or by any member thereof; and in case it shall appear, or be made to appear, to said board that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said board may issue an order directing the assessor whose assessments or failure to assess is complained against, to appear with his assessment roll at a time and place to be stated in said order, said time to be not less than seven days from the date of issuance of said order, and the place to be at the office of the board of supervisors at the county seat or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided. A notice of the time and place that said assessor is ordered to appear with said roll, together with a statement of the persons whose property or whose assessments are to be considered Assessment rolls to be inspected by board.

When property has been omitted. †

Notice of time and place assessor to appear with roll, to be published.

shall be published in a newspaper published at the county seat of said county if there be one; if not in some paper printed in said county if there be any, at least, five days before the time at which said assessor is required to appear, and where practicable personal notice by mail shall be given to said persons prior to said hearing. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by the review of said assessments thus provided for may appear and be heard at said hearing. In case said board or the member thereof who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board or member thereof acting in said review, shall place the same upon said assessment roll by proper description, and shall place thereafter, in the proper column, the true cash value of the same. In case of review under the provisions of this section, the said board or the member thereof acting in said review shall certify under his hand officially and spread upon said roll a certificate of the day and date at which said assessment roll was reviewed by him, and the changes by him made therein. For appearing with said roll as required herein the supervisor, or assessing officer shall receive the same per diem as is received by him in the preparation of his assessment roll, to

Hearing, how held.

Assessments may be changed.

Property not on roll may be added.

Per diem of assessing officer for appearing.



be presented to and paid by the proper officers of the municipality of which he is the assessing officer, in the manner as his other compensation is paid. The action of said board or member taken as provided in this act shall be final.

Action of  
board final.

SEC. 153. In case it shall appear or be made to appear to said board that any assessment roll in the state is so grossly irregular and unlawfully assessed that adequate compliance with the law cannot be secured except by a general review of said assessment roll, said board may make and issue an order that said assessment roll shall be subject to general review, and the time and place shall be stated in said order, at which said roll shall be reviewed, and under said order the assessor whose assessment or failure to assess is complained against shall be required to appear with his assessment roll at the time and place thus determined, said time to be not less than fourteen days from the issuance of said order, and the place to be at the office of the board of supervisors at the county seat, or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided for. A notice of the time and place that said assessor is required to appear with said roll, together with a statement that said roll will be subject to general review, and that all persons interested therein may be heard at said time, shall be published in a newspaper published at the county seat of said county, if there be one; if not, in some paper printed in said county, if there be any, at least seven days before the time at which said assessor is required to appear. A copy of the order made as aforesaid shall be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there review said assessment roll and may hear and determine complaints as to the said

General review  
of assessment  
roll.

Notice of time  
and place.

On whom to  
be served.

Board may  
change roll,  
etc.

assessment roll and the assessments of property therein, and he or they shall have power to determine in accordance with law, the amount at which said assessments shall be placed, and to change the same, so that said assessments may comply with the law. Also to place upon said roll property omitted therefrom in the same manner as provided in the last preceding section. The determination of said board or member thereof acting in said review shall place in a column provided for that purpose, and shall proceed in all respects as provided in the last preceding section, and the supervisor or assessing officer shall receive the same compensation as provided in said section.

Board to report property not assessed.

SEC. 154. If it shall be made to appear to said board at any time after the last meeting of the state board of equalization that any property liable to taxation has not been assessed for any previous year as hereinafter provided, the said board shall report the same to the proper assessing officer and the same shall be listed for taxation upon the next assessment roll that shall be made, and shall be valued as all other property. The said board shall further certify to the board of supervisors of the several counties at the October session thereof, next after said property shall be then listed for taxation, the description of said property and the several years that the same has been liable for, and escaped taxation, and said board of supervisors shall ascertain the rate of taxation for said several years and shall order the taxes for said years to be spread against said property upon the valuation for the then current year, and the same shall be so spread in a column provided for that purpose, and it shall constitute a charge against the person and property, and be collected as other taxes: *Provided however*, That this provision shall not be deemed to relate back prior to the going into effect of this section: *And provided further*, That in case of change in ownership of the property omitted said taxes shall not be spread against said property prior to the last change of ownership.

Charge against person and property.

Proviso.

Further proviso.

## TABLE OF CASES.

## A.

Adams Express Co. v. Kentucky, 166 U. S. 171, 180.....	214, 215, 219
Adams Express Co. v. Ohio, 165 U. S. 228.....	66, 125, 214, 215, 216, 219, 220, 223, 225
Adams Express Co. v. Ohio, 166 U. S. 219.....	90, 98, 124, 125, 130, 214, 215, 218, 225
Alabama & V. Ry. Co. v. Odeneal, 73 Miss. 34.....	228, 231
Alexander v. Mayor, 5 Cranch, 7.....	232
American Refrigerator Transit Co. v. Hall, 174 U. S. 70; s. c. 24 Col. 300.....	213, 219
American Sugar Refining Co. v. Louisiana, 179 U. S. 89.....	69, 70, 73, 93, 107, 118
American Transportation Company v. Moore, 5 Mich. 368; 24 How. 1 .....	95
Amery v. Keokuk, 72 Iowa, 704.....	163, 78
Ames v. People (56 Pac. 656, 26 Col. 83).....	84
Anderson v. City of Mayfield, 93 Ky. 230, 237, 238.....	211
Atchison T. & S. F. Ry. v. Matthews, 174 U. S. 96.....	101, 168, 236, 241
Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S. 160, 163..	214
Attorney General v. Glaser, 102 Mich. 405.....	127
Attorney General v. Looker, 111 Mich. 498, 501 (179 U. S. 46)	233
Avery v. East Saginaw, 44 Mich. 590.....	154

## B.

Bangor, Oldtown & Milford R. Co. v. Smith, 47 Me. 34, 48, 49.	228
Barbier v. Connolly, 113 U. S. 27.....	66, 67, 71, 72, 171
Bell's Gap Railroad Company v. Pennsylvania, 134 U. S. 232.	73, 93, 98, 138, 168
Bienville Water Supply Co. v. Mobile, 186 U. S. 222.....	236
Billings v. Illinois, 188 U. S. 97, 102, 103.....	67, 75, 113, 118
Bissell v. Heath, 98 Mich. 472, 478.....	233
Blum v. Southern Palace Car Co., Fed. Cases, 1574.....	104
Board of Education v. State Board of Assessors, (133 Mich. 116).....	162, 184, 211, 253
Board of Supervisors v. Auditor General, 65 Mich. 411.....	248
Boston, C. & M. R. R. Co. v. The State (Railroad v. The State) 60 N. H. 87.....	183
Brooks v. Cook, 44 Mich. 617.....	95
Brooks v. Hydorn, 76 Mich. 273, 277.....	254

## C.

California v. Pacific R. R. Co. 127 U. S. 1.....	90
Camden & A. R. Co. v. Atlantic City, 58 N. J. L. 316 (41 Atl. 1116) .....	110
Car Company v. Texas, 64 Texas 274.....	106
Carroll v. State, 58 Ala. 401.....	246
Cass Farm Co. v. Detroit, 181 U. S. 396.....	199
Cedar Rapids & M. C. Ry. v. City of C. R., 106 Iowa 476....	110
Central Iowa Ry. Co. v. Board of Supervisors, 67, Iowa 199..	78, 84, 175
Central Pac. R. R. Co. v. Board of Equalization, 60 Cal. 35....	144

Central Pacific Ry. Co. v. California, 162 U. S. 128.....	131
Central Pacific Ry. Co. v. Evans, 111 Fed. 76.....	6
Central Railroad Co. v. State Board of Assessors, 48 N. J. L., 1, 7 .....	172
Chadwick v. Kelly, 187 U. S. 544.....	161
Chamberlain v. Walter, 60 Fed. 788.....	78, 85, 123, 137, 174
Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386.....	69, 70, 78, 83, 137, 175, 219
Charlotte, etc. R. R. Co. v. Gibbes, 27 S. C. 385.....	237
Chicago & Alton R. R. Co. v. Lamkin, 97 Mo. 496.....	155, 183
Chicago, B. & Q. Ry. Co. v. Chicago (166 U. S. 258).....	101
Chicago B. & Q. R. Co. v. Iowa, 94 U. S. 155.....	116
Chicago R. I. & P. Ry. Co. v. Zernecke, 59 Neb. 689, 696.....	232
Citizens' Savings Bank v. Owensboro, 173 U. S. 636.....	235, 237
Citizens' St. Ry. Co. v. Com. Council, 125 Mich. 694.....	144
City of Dubuque v. C. D. & M. R. R. Co., 47 Iowa 200.....	78, 84, 90
City of Muskegon v. Boyer, 123 Mich. 535.....	172
City of Roxbury v. Boston, etc. R. R., 60 Mass. 432.....	228
Clark v. Kansas City, 176 U. S. 118.....	116
Clark v. Russell, 97 Fed. 900.....	101
Clark v. Titusville, 184 U. S. 329.....	69, 70, 171
Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439....	213, 215, 219, 220
Columbia, etc. R. R. Co. v. Gibbes, 24 S. C. 60, 73.....	227, 229
Columbus Southern Ry. Co. v. Wright, 151 U. S. 471..	78, 82, 137, 174, 219
Columbus Southern Ry. Co. v. Wright, 89 Ga. 574.....	78
Commissioner of Railroads v. Wabash R. R. Co., 123 Mich. 669	114
Commissioner of Railroads v. Wabash R. R. Co., 126 Mich. 115	152
Commonwealth v. Brown (Iverson Brown's Case), 91 Va. 762 777 .....	188, 189
Commonwealth v. Sharon Coal Co., 164 Penn. St. 284, (304) ..	100
Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 562, 563..	66, 71, 72, 75, 76
Conway v. Younkin, 28 Iowa 295.....	212
Cook v. Marshall County, 196 U. S. 269.....	69, 71, 75, 107, 118
Cordray v. Savannah, etc. Ry., 30 Am. & Eng. R. R. Cases (N. S.) 286 .....	111
Cotting v. Goddard, 183 U. S. 93, 94.....	88
Coulter v. Louisville & Nashville Ry. Co., 196 U. S. 608, 609..	69, 71
Covington v. Kentucky, 173 U. S. 232.....	235
Cowell v. Doub, 12 Cal. 273.....	211
Cumberland & Penn. R. R. Co. v. State, 92 Md. 668, 690.....	152
Cummings v. National Bank, 101 U. S. 153, 160.....	115, 172, 175

## D.

Dartmouth College Case (4 Wheat. 518, 708, 712).....	234
Davidson v. New Orleans, 96 U. S. 97.....	136, 197
Dayton v. Coal & Iron Co., 99 Tenn. 578, 581.....	113
Delaware Railroad Tax, 18 Wall. (85 U. S.), 206, 232.....	64, 93, 213, 215, 219
Dennison v. Allen, 106 Mich. 295.....	232
Detroit v. Detroit & Howell Plank Road Co., 43 Mich. 147..	233, 234, 236
Detroit v. Parker, 181 U. S. 399.....	199
Detroit v. Railway Co., 76 Mich. 421, 426.....	233
Detroit Common Council v. Detroit Board of Assessors, 91 Mich. 88 .....	154
Detroit, Grand Rapids & Western Railroad Co. v. Railroad Commissioner (119 Mich. 132) .....	122
Detroit St. Railways v. Guthard, 51 Mich. 180, 182.....	233

# 305

Dow v. Biedelman, 125 U. S. 680; 49 Ark., 335, 294.....	115
Dubuque (city of) v. C. D. & M. R. R. Co., 47 Iowa 200.....	78, 84, 90
Duncan v. Missouri, 152 U. S. 337, 382.....	71
Dundee Mortgage & Investment Co. v. School Dist., 21 Fed. 151, 155, 156 .....	172, 174
Dundee Mort. Trust & Invest. Co. v. Charlton, 32 Fed. 192, 194	154
Dundy v. Richardson' Co. Comrs., 8 Neb. 508, 519.....	212
Durand v. N. H. & N. Co., 42 Conn. 211, 223.....	228

## E.

East Saginaw Mfg. Co. v. East Saginaw, 19 Mich. 292-3.....	248
Erb v. Morasch (177 U. S. 584).....	110
Evansville Bank v. Britton, 105 U. S. 322.....	129, 140
Evansville Nat. Bank v. Britton, 8 Fed. 867.....	145
Exchange Bank v. Himes, 3 Ohio St., 1.....	144

## F.

Fairbank v. United States, 181 U. S. 297.....	216, 253
Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 174.....	164
Fargo v. Hart, 193 U. S. 490.....	214, 219, 220
Fay v. Wood, 65 Mich. 401.....	149
Fayette Co. v. Bank, 10 L. R. A. 196.....	144
Fayette County Treas. v. People's Bank, 47 Ohio S. 503.....	248
Fidelity Loan & Trust Co. v. Douglas, 9 Am. & Eng. R. R. Cases (N. S.) 713, 716, 717; 104 Iowa, 536.....	111
Field v. Barber Asphalt Pav. Co., 194 U. S. 621, 2.....	69
First National Bank of St. Joseph v. St. Joseph (46 Mich. 526) .....	126, 131, 247, 252
Florer v. Sheridan, 137 Ind. 28.....	144
Florida Central, etc. R. R. Co. v. Reynolds, 183 U. S. 479....	66, 78, 83, 107, 117, 134, 137, 174
Ford's Petition, 6 Lans. (N. Y.) 97.....	187
Forsyth v. Hammond, 166 U. S. 518.....	159
Foster v. Pryor, 189 U. S. 325, 331.....	160
Franklin County v. Nashville, etc. Ry. Co., 12 Lea (Tenn.) 521, 537 .....	124
French v. Barber Asphalt Co., 181 U. S. 341, 344....	161, 197, 199, 208
Front St. Cable Co. v. Johnson, 47 Am. & Eng. R. R. Cases (N. S.) 287 .....	111

## G.

Georgia R. R. & Banking Co. v. Miller (90 Ga. 571).....	101
Gibson County v. Pullman Southern Car Co., 42 Fed. 574....	106
Gillette v. Denver, 21 Fed. 824.....	163
Glozza v. Tiernan, 148 U. S. 657, 662.....	66, 67, 71
Glidden v. Harrington, 189 U. S. 259, 260.....	165, 197
Greenwood v. Freight Co., 105 U. S. 13.....	235, 236, 239
Guest v. Brooklyn, 8 Hun. (N. Y.) 97.....	187
Gulf, etc. Ry. Co. v. Ellis, 165 U. S. 150.....	69, 70, 71, 101, 137

## H.

Hagar v. Reclamation District, 111 U. S. 708, 709.....	163, 196, 198, 200, 208, 210
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 258, 271..	236, 237, 239
In re Apportionment of Taxes, 78 Mo. 595.....	183

Henderson Bridge Co. v. Henderson City, 141 U. S. 689.....	214
Henderson Bridge Co. v. Henderson City (173 U. S. 592, 614, 615) .....	65, 214
Henderson Bridge Co. v. Kentucky, 166 U. S. 151.....	215, 218
Hendrix v. Rieman, 6 Neb. 517, 522.....	232
Hepburn v. School Directors, 90 U. S. 480.....	131
Hills v. Exchange Bank 105 U. S. 319, 322.....	130, 132, 140
Hoge v. Muscatine County, 176 U. S. 280.....	163
Hoge v. Railway Co., 99 U. S. 348, 351.....	235, 239
Holyoke Co. v. Lyman, 82 U. S. 500.....	236
Home Insurance Co. v. New York, 134 U. S. 594....	69, 72, 150, 151, 171
Horn v. New Lots, 83 N. Y. 100.....	209
Hubbard v. Brush, 61 Ohio 8. 252.....	248
Huling v. Kaw Valley Railway, 130 U. S. 559.....	198

## I.

In re Assessment and Collection of Taxes, 54 N. W. 818, (S. D.) .....	144
In re Construction of Revenue Law, 48 N. W. 813 (S. D.)....	144
Insurance Co. v. Board of Assessors, 95 Mich. 468.....	129, 144
Iverson Brown's Case (91 Va. 778).....	188, 189

## J.

Jacksonville v. McConnell, 12 Ill. 138.....	144
Jersey City v. B. Ry. Co., 65 N. J. L. 501.....	110
Jones v. Chamberlain, 109 N. Y. 100.....	187
Joyes v. Summer, 27 Ind. 511.....	212

## K.

Kadderly v. Portland, 74 Pac. 710, 719.....	204
Kelly v. Pittsburgh, 104 U. S. 78.....	157, 160
Kentucky Railroad Tax Cases, 115 U. S. 321....	69, 80, 110, 137, 174, 197
Kentucky Railroad Taxes Cases (81 Ky. 492, 512).....	78
Kidd v. Alabama, 188 U. S. 730.....	69, 71, 110, 114
King v. Mullins, 171 U. S. 404, 435, 436.....	65
King v. Portland City, 184 U. S. 69, 70.....	197

## L.

Lander v. Mercantile Bank, 186 U. S. 458.....	200
Leep v. Railway Company, 58 Ark. 407.....	117, 228, 241, 243
Legal Tender Cases, 12 Wall. (79 U. S.) 561.....	152
Leigh v. Green (193 U. S. 88).....	197
Litchfield v. Vernon, 41 N. Y. 123, 141.....	209
Looker v. Maynard, Attorney General, 179 U. S. 46; 111 Mich. 498, 501 .....	237
Lookout Incline & L. E. R. R. v. King, 59 S. W. 805.....	110
Lothrop v. Stedman, 13 Blatch (U. S.) 134.....	236
Louisville & N. R. Co. v. City of L., 29 S. W. (Ky.) 865..	78, 85, 137, 175
Louisville & N. R. R. Co. v. Kentucky, 183 U. S. 503, 519....	218
Louisville & N. Ry. Co. v. Tenn. Ry. Com., 19 Fed. 679.....	100
Louisville & P. R. R. Co. v. Louisville City Ry. Co., 2 Duv. (Ky.) 175 .....	111
Louisville Water Co. v. Clark, 143 U. S. 1, 10.....	235, 237, 239
Luther v. Borden, 7 How. 39, 42, 47, 57.....	207

## M.

McCandless v. Richmond & D. R., 18 L. R. A. 440.....	101
McCulloch v. Maryland, 4 Wheat. (17 U. S.) 316, 428.....	63, 149
McDade v. People, 29 Mich. 50.....	95
McHenry v. Alford, 168 U. S. 651, 665, 673...78, 83, 93, 97, 124, 137, 175	232
McHenry v. Brett, 9 N. D. 68, 70.....	223
McLeod v. Receveur, 71 Fed. 458.....	223
McMillen v. Anderson, 95 U. S. 37.....	165, 196, 200
McPherson v. Secretary of State, 92 Mich. 377; 146 U. S. 1....	253
McPherson, Matter of, (104 N. Y. 306, 318).....	187, 194
Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293... 66, 68, 93, 118, 171	151, 219
Maine v. Grand Trunk Ry. Co., 142 U. S. 217.....	223
Maish v. Arizona, 164 U. S. 611.....	214, 219
Marye v. Baltimore & Ohio R. R. Co., 127 U. S. 117.....	233
Mason v. Perkins, 73 Mich. 303, 318.....	110
Mass. Loan & Trust Co. v. Hamilton, 11 Am. & Eng. R. R. Cases (N. S.) 771, 88 Federal 588.....	183
Matter of Apportionment of Taxes, 78 Mo. 595.....	187, 194
Matter of McPherson, 104 U. Y. 306, 318.....	237
Mayor v. St. Ry. Co., 113 N. Y. 319.....	107, 112
Mercantile Bank v. New York, 121 U. S. 161, 162.....	211
Mercantile National Bank v. Hubbard, 98 Fed. 465, 469....	69, 138, 168, 200
Merchants & M. Nat. Bank v. Pennsylvania, 167 U. S. 461....	145
Merchant's Nat. Bank v. Shields, 59 Fed. 952.....	210
Meriwether v. Garrett, 102 U. S. 472.....	235
Miller v. State, 82 U. S. 478, 499.....	212
Milwaukee v. Supervisors, 15 Wis. 10.....	246
Minis v. United States, 15 Peters, 445.....	100, 101
Minneapolis, etc. Ry. v. Beckwith, 129 U. S. 26.....	101
Minneapolis, etc. Ry. Co. v. Emmons, 149 U. S. 364.....	100, 101
Minneapolis, etc. Ry. Co. v. Herrick, 127 U. S. 210.....	202, 203
Minor v. Happersett, 88 U. S. 162, 175.....	118, 134
Missouri v. Dockery, 191 U. S. 170, 171.....	71
Missouri v. Lewis, 101 U. S. 22.....	101, 102
Missouri, Kansas & Texas Ry. v. May, 194 U. S. 269.....	100
Missouri Pacific Ry. Co. v. Humes, 115 U. S. 512.....	100, 101
Missouri Pacific Ry. v. Mackey, 127 U. S. 205.....	78, 84
Missouri River, etc. R. R. Co. v. Morris, 7 Kan. 210.....	214
Moran v. New Orleans, 112 U. S. 69.....	146, 163, 181
Morton, Bliss & Co. v. Comptroller, 4 S. C. 474.....	172
Muskegon, (City of) v. Boyce, 123 Mich. 535.....	211
Musselman v. Logansport, 29 Ind. 533.....	

## N.

National Loan & Investment Co. v. Detroit, 136 Mich. 451....	248
New Jersey v. Yard, 95 U. S. 104.....	236
New York v. Barker, 179 U. S. 279.....	69, 70, 100, 175
New York L. E. & W. R. R. Co. v. Penn., 158 U. S. 431, 437..	215, 216, 217
New York & N. E. R. Co. v. Bristol, 151 U. S. 556.....	101, 237
New York & New Eng. R. R. Co.'s Appeal, 62 Conn. 527, 538...	227, 229
Northern Central Ry. Co. v. Maryland, 187 U. S. 258, 268, 269..	228, 232

Northern Pacific R. R. Co. v. Barnes, 2 N. D. 310, 395, 396, 397 .....	78, 83, 93, 175
Northern Pacific R. R. Co. v. Walker (47 Fed. 685, 686) .....	96
Nottage v. Portland, 35 Ore. 553, 554 .....	164

## O.

Owensboro & N. Ry. Co. v. Davies County, 3 S. W. (Ky.) 164 .....	78, 84
--	--------

## P.

Pacific Express Co. v. Seibert, 142 U. S. 339 .....	72, 105, 106, 172
Parsons v. Dist. of Columbia, 170 U. S. 45 .....	161, 208
Paulsen v. Portland, 149 U. S. 39, 40 .....	164, 198, 208
Pearsall v. Great Northern Ry., 161 U. S. 663 .....	235
Feik v. Chicago, etc. Ry. Co., 94 U. S. 164 .....	237
Pennsylvania College Cases, 80 U. S. 190 .....	236
Pennsylvania R. R. Co. v. Duncan, 111 Pa. St. 352 .....	228
People v. Auditor General, 7 Mich. 90 .....	248
People v. Blk. Diamond Coal Co., 37 Cal. 54 .....	144
People v. Blodgett, 113 Mich. 151, 152 .....	251
People v. Brooklyn, 4 N. Y. 427 .....	309
People v. Fire Assn. of Phil., 92 N. Y. 511, 327 .....	187
People v. Flagg, 46 N. Y. 405 .....	309
People v. Gerke, 35 Cal. 677 .....	144
People v. McCreery, 34 Cal. 432 .....	144
People v. Mahaney, 13 Mich. 499 .....	188, 189, 192, 227
People v. National Bank, 45 L. R. A. 751 .....	145
People v. National Fire Ins. Co., 27 Barb. (N. Y.) 188 .....	192
People v. River Raisin & L. E. R. R. Co., 12 Mich. 389, 395 .....	121
People v. Supervisors of King's County (52 N. Y. 556, 566) ..	190
People v. Supervisors of Orange, 17 N. Y. 238 .....	188, 192, 193
People v. Whortenby, 38 Cal. 461 .....	144
People v. Worthington, 21 Ill. 171 .....	144
People's Loan, etc. Association v. Keith, 153 Ill. 609 .....	144
Picard v. East Tenn., etc. R. R. Co., 120 U. S. 641 .....	63
Pingree v. Auditor General, 129 Mich. 95 .....	99, 143, 156, 188, 244, 250
Pittsburgh, C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421 .....	78, 82,
138, 174, 175, 200, 213, 220, 223, 224 .....	224
Pittsburgh, C. C. & St. L. Ry. Co. v. Backus, 133 Ind. 625 .....	78
Pittsburgh C. C. & St. L. Ry. v. Board of Public Works, 172 U. S. 45 .....	196, 216
Pittsburgh, etc. R. R. Co. v. Montgomery, 152 Ind. 1, 13 .....	243
Plummer v. Coler, 178 U. S. 115, 127, 134 .....	152
Porter v. R. R. I. & St. L. R. Co., 76 Ill. 596 .....	212
Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 695 .....	213, 214,
215, 216, 219 .....	219
Providence Bank v. Billings, 4 Peters, 351, 353 .....	63, 150
Pullman Palace Car Co. v. Gaylord, 9 Ky. Law Rep. 58 .....	104
Pullman Palace Car Co. v. Hatch (70 S. W. 771), 30 Tex. Civ. App. 302 .....	104
Pullman Palace Car Co. v. Pennsylvania, 141 U. S. 19 .....	214, 216, 219
Pullman P. C. Co. v. State of Texas ("Car Co. v. Texas") 64 Texas 274 .....	106
Pullman Southern Car Co. v. Gaines, 3 Tenn. Chancery, 587 ..	106
Pullman State Bank v. Manring, 18 Wash. 255 .....	129



## R.

Railroad Company v. Harris, 99 Tenn. 706, 707.....	110, 114
Railroad Co. v. Maine, 96 U. S. 499.....	235, 237
Railroad v. State, 60 N. H. 87.....	183
Reclamation District v. Phillips, 108 Cal. 314.....	163
Riley v. Galveston City Ry. Co., 13 Texas Civ. App. 247.....	111
Robbins v. Taxing District, 81 Tenn. 309.....	106
Roxbury (city of) v. Boston, etc., R. R. Co., 60 Mass. 432.....	228
Ryan, et al. v. Carter, et al., 93 U. S. 78, 84.....	232

## S.

S. V. R. R. Co. v. Supervisors, 78 Virginia 279.....	90
St. Albans v. Car Co., 57 Vt. 82.....	228
St. Louis Bridge Co. v. People, 128 Ill. 428.....	154
St. Louis I. M. & St. Ry. Co. v. Paul, 173 U. S. 408, 409.....	92, 101, 115, 117, 228, 231, 236, 237, 237, 240, 243
St. Louis, I. M. & S. Ry. Co. v. Paul, 64 Ark. 83, 95.....	228, 231
St. Louis, etc. Ry. Co. v. Worthen, 52 Ark. 528.....	78, 85, 175
San Bernardino Co. v. Southern Pacific R. Co. (118 U. S. 422)	136
San Diego Land & Town Co. v. National City, 174 U. S. 754..	66
San Francisco & N. P. Ry. Co. v. Board of Equalization, 60 Cal. 12 .....	114
San Mateo County v. So. Pacific R. R. Co., 13 Fed. 722 and 145.....	132, 135, 139, 140, 144
Santa Clara County v. So. Pacific Ry. Co., 18 Fed. 385.....	132, 135, 140, 144
Savannah, etc. Ry. Co. v. Williams, 30 Am. & Eng. R. R. Cases (N. S.) 279 .....	111
Savannah T. & I. Ry. Co. v. Mayor, 198 U. S. 392.....	110
Sawyer v. Dooley, 21 Nev. 390, 398.....	79
Scaling v. Pullman Palace Car Co., 24 Mo. App. 32.....	104
Schoolcraft, Admr. v. Louisville N. R. Co., 92 Ky. 233.....	101
Shannon v. People, 5 Mich. 36, 50.....	232
Shields v. Ohio, 95 U. S. 324.....	237
Sinking Fund Cases, 99 U. S. 700.....	235, 236
Skinner v. Garnet Gold Mining Co., 96 Fed. 744.....	241
Slaughter House Cases, 16 Wall. (83 U. S.) 36, 81.....	64
Sloat v. McComb, 42 N. J. L. 484.....	246
Smith v. Lake Shore & M. S. Ry. Co., 114 Mich. 460, 462..	233, 234, 237
Smith v. Macon, 29 Ark. 17.....	202
Snyder v. Bettman, 190 U. S. 254.....	152
Society for Savings v. Collis, 73 U. S. 594, 608.....	152
South Platte Land Co. v. Crete, 11 Neb. 344, 347.....	212
Spencer v. Merchant, 125 U. S. 345, 353, 354.....	149, 162, 198, 208, 210
Spring Valley Water Works v. Schottler, 110 U. S. 347.....	236, 237
Standard Life & Accident Association v. Assessors, 95 Mich. 466 .....	129, 144
Stanley v. Supervisors, 105 U. S. 305.....	115, 129, 139, 140, 141
Stanley v. Supervisors of Albany, 121 U. S. 535; 105 U. S. 306 .....	131, 139, 141, 142, 254
State v. Dodge Co., 30 Neb. 600.....	154
State v. Duluth Gas & Water Company, 76 Minn. 76 (78 N. W. 1032) .....	111, 129, 144
State v. Haworth, 122 Ind. 466, 467.....	152
State v. Mo. Pac. R. R. Co., 92 Mo. 137.....	183
State v. M. S. Ry. Co., 161 Mo. 199.....	183
State v. Moffett, 67 N. W. (Minn.) 68; 64 Minn. 292.....	144

State v. Northern Central Ry. Co., 90 Md. 447, 469.....	228
State v. Severence, 55 Mo. 378.....	79
State v. Smiley, 65 Kansas, 255.....	129
State v. Smith, 63 N. E. (Ind.) 25; 64 N. E. (Ind.) 18.....	144
State v. Terre Haute, 130 Ind. 443.....	152
State Board of Assessors v. Central R. R. Co., 48 N. J. L. 146 278, 280, 290, 300, 313.....	78, 84, 90
State Railroad Tax Cases, 92 U. S. 575.....	78, 79, 137, 167, 174, 175, 196, 200
State Tax on Railway Gross Receipts, 15 Wall. (82 U. S.) 284.....	216
Stearns v. Minnesota, 179 U. S. 223.....	98, 228, 237
Streight v. Durham, 10 Okl. 361, 373; 61 Pac. 1096, 1100....	211
Supervisors v. Stanley, 105 U. S. 305.....	115, 129, 139, 140, 141

## T.

Tappan v. Merchants' Nat. Bank, 19 Wall (86 U. S.) 490, 504	167
Taylor, etc. v. Louisville & N. R. Co., 88 Fed. 350.....	172, 177
Texas v. White, 74 U. S. 700, 720, 721.....	205, 207, 208
Thomas v. Gay, 169 U. S. 280.....	157, 160, 202
Tomlinson v. Jessup, 82 U. S. 454, 457.....	228, 231, 237, 235
Tonawanda v. Lyon, 181 U. S. 389.....	199
Township v. N. Y., etc. R. R. Co., 45 N. J. E. 436.....	237
Township of Caledonia v. Rose, 94 Mich. 216.....	131
Transportation Co. v. Wheeling, 99 U. S. 273.....	214
Travelers' Life Ins. Co. v. Conn., 185 U. S. 364.....	69, 70, 99, 138, 167, 171, 174
Trowbridge v. City of Detroit, 99 Mich. 443.....	188, 190
Tullis v. Lake Erie & Western R. R. Co., 175 U. S. 348....	100, 115, 243
Turpin v. Lemon, 187 U. S. 58.....	197, 198

## U.

Union Pacific R. R. Co. v. Peniston, 18 Wall (85 U. S.) 5, 29, 30 .....	63
Union Passenger Ry. Co. v. Philadelphia, 161 U. S. 528.....	235, 237
Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149.....	213
Union Trust Co. v. Wayne Probate Judge, 125 Mich. 487....	188
United States v. New Orleans, 98 U. S. 381, 392.....	210
United States v. Union Pacific Ry., 160 U. S. 37.....	235, 238

## V.

Voigt v. Detroit, 184 U. S. 122.....	197
--------------------------------------	-----

## W.

Waggoner v. Evans, 170 U. S. 592.....	160
Wagoner v. Loomis, 37 Ohio St., 571, 578, 580.....	172, 177
Walcott v. People, 17 Mich. 68.....	188, 248
Walston v. Nevin, 128 U. S. 582.....	164
Warden, et al. v. Supervisors, 14 Wis. 618.....	212
Wellman v. Chicago & G. T. Ry. Co., 83 Mich. 592, 599.....	115
Western Union Telegraph Company v. Indiana, 165 U. S. 304..	105
Western Union Tel. Co. v. Mass., 125 U. S. 590.....	214, 216, 219
Western Union Tel. Co. v. Mass., 141 U. S. 40.....	214
Western Union Tel. Co. v. Missouri, 190 U. S. 412.....	214

Western Union Tel. Co. v. Taggart, 163 U. S. 1.....	214
Westinghausen v. People, 44 Mich. 265.....	190, 192
Weston v. Charleston, 2 Peters (25 U. S.) 466.....	63
Weyerhaeuser v. Minnesota, 176 U. S. 556, 557.....	197, 200
Wharton v. School District (42 Pa. St. 364).....	150, 162
Wheeler v. Wall., 6 Allen (Mass.) 558.....	202
Whitbeck v. Mercantile National Bank, 127 U. S. 193.....	132, 145
White v. Hart, 13 Wall. 649, 652.....	207
Williams v. Eggleston, 170 U. S. 310, 311.....	159, 208
Winona, etc. Land Co. v. Minnesota, 159 U. S. 537.....	196, 200
Wisconsin & Mich. Ry. Co. v. Powers, 191 U. S. 387.....	152
Woodson v. State, 69 Ark. 521, 528.....	241

## Y.

Yazoo & M. V. R. Co. v. Adams (26 So. 335; 76 Miss. 545)...	78, 84
---	--------

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

---

No. 397.

---

THE MICHIGAN CENTRAL RAILROAD COMPANY,  
APPELLANT,

vs.

PERRY F. POWERS, AUDITOR GENERAL OF THE STATE  
OF MICHIGAN.

---

**Criticisms by Appellee's Counsel on Statements of  
Fact in Mr. Butterfield's Brief on Undervaluation,  
&c.**

---

We call attention to the following errors in statements of fact in Mr. Butterfield's brief, confining the criticism to items requiring reference to the record and which are not specifically covered by our brief.

*1. Admissions of Undervaluation in 1901 and 1902.*

(a.) Mr. Butterfield's brief asserts (p. 14) that the 1902 report of the board of State tax commissioners contains the statement that "they (*meaning the local assessors*) rarely claimed that assessments of property had been made at cash

value, as the law clearly and forcibly directs, but in fact admitted the prevalence of the plan of assessing property at a percentage of its value," etc. (The italics above are our own.)

The statement that the testimony referred to relates to the local assessors is clearly an error. The record does not so state (R., 146). The reference in the record is to page 36 of the 1902 report of the tax commission. The entire of this report is not printed in the record. It was, however, made an exhibit in the case (Exhibit C). Reference to it will show that the testimony referred to relates to statements of representatives of counties before the State board of equalization in 1901, who were not necessarily supervisors. The transcript of the record expressly so states. This was pure hearsay. (See last paragraph on page 121.)

(b.) Mr. Butterfield states (Brief, p. 14) that Commissioner Freeman testified that in the year 1902 the supervisors often admitted undervaluation. The statement is thus qualified :

" Oftentimes supervisors would *admit the result* and say 'that is about how I am assessing.' Some of them would claim that they were assessing at full value notwithstanding the data, or say to the contrary—some would claim they were assessing better than our per cents. would show them to be, not at full value, but better, and some would admit that was about right and some would claim that they were assessing already at value " (124-'5).

" That was prior to the first of June, prior to the completion of the roll " (R., 124).

(c.) Mr. Butterfield's brief (p. 14) states that Commissioner Freeman testified " that the statement contained on page 17 of Exhibit C, to the effect that the old plan of assessing

property at a percentage of its value still prevails," was true, and that (Brief, p. 15) Commissioner Dust testified to the same effect. Reference to the record (pp. 126 and 69) shows that the report referred to did not state that "the old plan of assessing property at a percentage of its value prevailed," but only that the commissioners impressed upon the supervisors that *while* that plan prevailed there would be danger of as many different percentages as supervisors in a county. This is entirely distinct from an assertion in the report of the actual existence of a system of general and intentional undervaluation.

None of the statements mentioned are evidence of such system.

(d.) Mr. Butterfield's brief also states (p. 16) that Commissioner Dust testified that in January, 1903, the assessments of general properties were still below cash value, and that Commissioner McLaughlin testified that the answer in the Board of Education case, which stated that the undervaluation was intentional and general, was his deliberate conclusion. Commissioner Dust refuses to say that any general condition of this kind existed. Thus:

"Q. Could you give us any idea what proportion of the assessors of the State up to that time had put their assessments to what you deemed to be the true cash value and what part had not?

A. No, sir, I would not attempt to" (R., 70-71).

He further qualifies the statement as to undervaluation thus:

"A. I wouldn't want to qualify it excepting to say that if this sets out that all the undervaluation is intentional, then I do want to qualify it, because as I stated before, that some

are a mistake of judgment on the part of the assessor; some are the result of indolence and carelessness and some of it was intentional" (R., 72).

Commissioner McLaughlin discredits the answer in the Board of Education case thus:

"That expresses the opinion of a portion of the tax commission. It is stronger than I would make it according to my opinion of the situation. \* \* \* I could subscribe to that then and the same now, but my individual judgment is that that is true in a qualified sense, but at the time I didn't think it was just exactly true, but it was the judgment of a majority of the board. \* \* \* A. Yes, I mean that I had to do lots of things on the board that was not altogether my judgment. \* \* \* A. I simply say that language is stronger than I would employ, because I think it gives, or it is apt to give, a wrong impression" (R., 95-96).

(c.) Mr. Butterfield's brief (p. 17) also states that Examiner Bolt "admitted that in his county and over the State generally, as far as his knowledge extended, it had been the habit to assess at a percentage of the true cash value."

Mr. Bolt's testimony expressly limited that statement to a time previous to 1902. He not only says that by 1901 his township was brought up to 100 per cent. (R., 193), but the question referred to in Mr. Butterfield's brief expressly related to a time previous to 1899.

"Q. Don't you know as a matter of fact that that is the habit as a general proposition all over the State of Michigan?"

"A. To do what?"

"Q. To assess property *prior to 1899* or to attempt to assess property in their townships at some percentage of the true cash value less than 100 %?"

"A. That is my belief and my understanding that they

used to assess property at less than its actual value; that is, as far as my knowledge extended. I don't know what they did in the south part of the State here" (193).

2. *Comparison of Michigan Railway Appraisal of 1900 with Cooley and Adams Appraisal of 1902.*

Mr. Butterfield calls attention (Brief, p. 52) to the fact that Professor Adams' valuation of the Michigan Central for 1902 is about fourteen millions greater than that for 1900, and says "this enormous increase is due to the changes in the method of computation" adopted by Adams in 1902.

The fact is that of the fourteen millions referred to nearly eleven millions was due to the increase in *physical values* from 1900 to 1902, as to which increase there is no dispute. (See table 739-a, between pages 544 and 545 of the record). Mr. Butterfield's computation shows only that if the 1900 method (which was not intended to procure an accurate appraisal, but only to determine the fact whether railroads were paying as high a rate of taxation as other property) had been adopted for 1902, this rich road with its large, safe, and steadily increasing net earnings (remaining even after paying for permanent additions out of earnings) whose bonds and stocks have been for years above par and which, besides paying dividends without interruption and so "fattening" the road that its physical value (partly as the result of the policy referred to) increased nearly 30 per cent in less than two years, *has no franchise or intangible value*. Nothing could better prove than does this computation of Mr. Butterfield's, the unreasonableness of applying the average earnings, interest, and tax rates used in his comparison.



### 3. *Michigan Mileage Proportion.*

Mr. Butterfield says (Brief, p. 55) that the fourteen miles of Illinois Central track from Kensington to Chicago should have been considered by Professor Adams in determining the Michigan mileage ratio. It is the undisputed testimony of Mr. Thompson that the omission was made because Mr. Burt, the auditor of the Michigan Central, "informed me that company derives no net revenue from that portion of line" (R., 612).

Appellant's expert witness, Professor Johnson, takes  $68\frac{5}{16}$  per cent. as the Michigan mileage ratio (R., 671). The omission complained of is too insignificant to affect the result.

---

### *Actual Value of Michigan Central Stock.*

In our brief on undervaluation, at page 137, it is stated that the Michigan Central report to the State officials gives the value of the stock as about 115. When that was written the writer believed that this item in the report was in the transcript of the record returned to this court. Such does not seem to be the fact. The report, however, was made an exhibit in the case, being Defendant's Exhibit No. 8, February 19, 1904. The fact of value is, however, otherwise shown. Treasurer Cox testified: "If you want to know the value of the total capital stock, you should take somebody that is willing to take it all, as New York Central did; they don't need it all to get control, but would like to have

it " (R., 658). The New York Central had an outstanding offer for this stock, and as late as June 30, 1901, was still buying it in at the 115 price (R., 661).

JOHN E. BIRD,  
*Attorney General of Michigan,*  
*Solicitor for Defendant.*

CHARLES A. BLAIR,  
ROGER IRVING WYKES,  
CHARLES E. TOWNSEND,  
LOYAL E. KNAPPEN,  
*Of Counsel.*



THE MICHIGAN CENTRAL RAILROAD COMPANY  
CONSOLIDATED

PERRY F. FOWLER, AUDITOR GENERAL OF THE  
STATE OF MICHIGAN

BRIEF AND ARGUMENT FOR AFFIDAVIT  
ON UNDERVALUATION

By LEO E. KINGS

(19399)

# Supreme Court of the United States.

NO. 397.

(And Nos. 462-487 inclusive.)

THE MICHIGAN CENTRAL RAILROAD  
COMPANY,

Complainant and Appellant,

vs.

PERRY F. POWERS, AUDITOR GEN-  
ERAL OF THE STATE OF MICHIGAN,  
Defendant and Appellee.

Appeal from the Circuit Court of the United States for the  
Western District of Michigan.

## BRIEF AND ARGUMENT FOR DEFENDANT ON UNDER-VALUATION.

---

### Statement.

This appeal involves the tax upon the appellant Railroad for the year 1902, assessed under the authority of the Michigan ad valorem law of 1901.

It is alleged in complainant's bill that the general properties of the state were under-valued for the purposes of the 1902 assessment in question, and that this under-valuation was intentional and in accordance with a practice prevailing generally among assessing officers throughout the state. The specific claim presented is that the true cash value of the general properties of the state was about \$1,715,000,000, while the assessed valuation was but \$1,418,251,858, or about 82.6 -[- per cent. of the true cash value of these properties; that the average rate of taxation thus assessed upon complainant's property under the ad valorem law of 1901 was, by such under-valuation of the general properties of the state, increased from what

would have been a rate of \$13.68 -|- to \$16.55 -|- upon each one thousand dollars of assessed valuation. (Bill of Complaint, Record, pp. 3-7.)

The only specification of errors relating to the subject of general property under-valuation is assignment number 12, namely:

"The assessment of complainant's property, upon which is founded the tax involved in this suit, was made at the property's true cash value. The rate imposed upon the property of complainant by the proceedings in question in this cause was the average rate paid upon property in the state other than that taxed under said Act No. 173 of the Michigan Public Acts of 1901, upon which ad valorem taxes were assessed for state, county, school and municipal purposes. The evidence shows that such other property was uniformly, intentionally and generally assessed at the time in question, at not more than 82 -|- per cent. of its true cash value; and 17 -|- per cent. of the tax in question therefore should be set aside." (Record p. 858.)

The appellee denies the allegation that the general properties of the state were, in fact, substantially and generally under-valued, and (if any under-valuation be found to have existed in 1902) denies that such under-valuation was fraudulent, or in pursuance of any rule or system of intentional under-valuation adopted by assessing officers generally in Michigan.

The appellee further insists, by answer and proofs, that the assessment of the Michigan portion of the appellant's railroad property by the State Board of Assessors for 1902 was not only greatly below its real value, but that such under-valuation was even greater than the alleged under-valuation of the general properties of the state. The appellee also insists that such under-valuation of appellant's railroad prop-

erty was intentionally made. (Defendant's Answer, Record pp. 39 and 57.)

The Michigan Tax Commission (which has general supervision and control over all assessments of general property) was organized in 1899. The valuations of the general properties of the state from 1899 to 1903, as assessed and reviewed, were as follows:

For 1899.....	\$ 968,189,087
For 1900.....	1,317,450,028
For 1901.....	1,328,632,691
For 1902.....	1,418,251,858
For 1903.....	1,537,849,903

(Record, pp. 355, 61, 119.)

The first assessment of railroad property for taxation under the Michigan ad valorem law of 1901 was made by the State Board of Assessors in 1902. The values of the Michigan portion of appellant's railroad property for the years 1902 and 1903, respectively, as so assessed by the State Board of Assessors, were as follows:

For 1902.....	\$45,000,000
For 1903.....	55,500,000

(Record, p. 816.)

If it shall be determined that there was no such under-valuation of the general properties of the state in 1902 as to entitle complainant to relief on account thereof, the question of the under-valuation of the railroad properties for that year is immaterial. If, however, appellant should be held entitled to consideration on account of an under-valuation of the general properties, the question of the under-valuation of appellant's property does become material for the purpose of determining whether appellant has been, in fact, injured, and for the purpose of determining the tax which appellant shall be required to pay as a condition of relief.

The District Judge found that there was no evidence of

—4—

any general or uniform fraudulent under-assessment of the general properties of the state, and accordingly did not enter upon a determination of the question of the under-valuation of appellant's railroad property. (Record, pp. 853-4.)

At the end of this brief is an index to the Transcript of Record with reference to witnesses and exhibits, (so far as they pertain to the subjects treated herein), classified by subjects and parties.

**Note:**—The references to the Transcript of Record, contained in this brief, are to the "print page."



## **Outline of the Argument.**

### **I.**

## **UNDER-VALUATION OF THE GENERAL PROPERTIES OF THE STATE.**

### **GENERAL PROPOSITION.**

No such under-valuation of the general properties of the state for the year 1902 is shown by the evidence as can entitle appellant to relief.

Argument, p. 14.

### **THE RULE OF LAW GOVERNING THE SUBJECT.**

To entitle appellant to relief it must appear that the average rate of taxation assessed upon the general property of the state was wrongfully increased to appellant's detriment, by an intentional, fraudulent, general and substantial under-valuation of the general properties of the state.

Argument, p. 14.

State Railroad Tax Cases, 92 U. S. 612.

Cummings vs. Nat'l Bank, 101 U. S. 153, 155.

Nat'l Bank vs. Kimball, 103 U. S. 735.

Supervisors vs. Stanley, 105 U. S. 305, 318.

Stanley vs. Supervisors, 121 U. S. 548.

Bank vs. Perea, 147 U. S. 87.

New York State vs. Barker, 179 U. S. 279, 284.

Coulter vs. L. & N. Ry. Co., 25 Sup. Ct. Rep. 342.

### **THE EVIDENCE OF GENERAL PROPERTY UNDERVALUATION.**

The evidence in the case fails to show that there was any substantial under-valuation of the general properties of the state in the 1902 assessment. The evidence fails to show that such under-valuation as may have existed in some cases or in some localities was fraudulent and intentional, or that it was general and the result of concerted action on the part of assessing officers.

Argument, p. 18.

FIRST.

There was no substantial under-valuation of the general properties of the state in the year 1902.

Argument, p. 19.

1. Organization and powers of the Tax Commission, and general history of the movement for equal taxation.

Argument, p. 19.

a. Gov. Pingree's assumption that the general properties of the state were assessed in 1899 on a 65 per cent. basis, was largely guess-work.

Argument, p. 22.

b. Such assumption was not an adjudication by the Governor of the existence of such under-valuation.

Argument, p. 22.

2. The actual and admitted results of the efforts of the Tax Commissioners to bring assessments to cash value, urgently pushed for more than three years before the 1902 assessment was completed, of itself strongly discredits the claim of a substantial and general property under-valuation in 1902.

Argument, p. 28.

a. The property of the state generally had been brought to substantial cash value by 1901.

Argument, p. 30.

3. The evidence presented by appellant utterly fails to overthrow the presumption of the legality of the official valuations of the assessing officers made under this close supervision of the Tax Commission, and to sustain the burden of proof that property generally was substantially under-valued in the 1902 assessment.

Argument, p. 33.

a. The evidence relied on by appellant to sustain this burden is of four kinds: (1) The estimates of field men com-

pared with actual assessments of supervisors; (2) the Tax Commissioners' 1901 estimate of the value of the general properties of the state as compared with the actual assessments for that year; (3) the equalized valuation of the general properties of the state as adopted by the State Board of Equalization in 1901; (4) the commission's estimate of actual values in 1902.

Argument, p. 33.

(1.) The work of the field examiners both in 1901 and 1902 was wholly unreliable and furnished a less safe estimate of values than the assessments made by the assessing officers.

Argument, p. 34.

(a) The field men's estimates were unsatisfactory to themselves.

Argument, p. 40.

(b) They were equally unsatisfactory to the Tax Commissioners.

Argument, p. 41.

(c) Differences of more than 100 per cent. in the relations between assessed value and estimated value result by including a larger instead of a smaller number of pieces in the comparison.

Argument, p. 41.

(d) Yet the value of an entire township was estimated as if the same conditions of relative inequality prevailed throughout the township.

Argument, p. 42.

(2.) The 1901 estimate of the Tax Commissioners as presented to the State Board of Equalization was not only based upon the unreliable and discredited reports of the field men, but was shown by the subsequent experience of the Commissioners themselves to have been grossly extravagant and wholly unreliable.

Argument, p. 43.

- (a) This 1901 estimate was not an adjudication.

Argument, p. 43.

(b) This 1901 estimate has since been expressly discredited by the Commissioners, and the field examiners' reports likewise repudiated.

Argument, p. 45.

(3.) The equalized valuations adopted by the State Board of Equalization in 1901 do not tend to show an aggregate under-assessment of the general properties of the state in 1902.

Argument, p. 47.

(a) The State Board's equalization was not an adjudication of values.

Argument, p. 48.

(b) The report of the State Board of Equalization was not competent evidence to prove under-valuation.

Argument, p. 50.

(4.) The estimate made by the State Board of Assessors of the value of the general properties of the state in 1902 does not prove an under-valuation of those properties in the year in question.

Argument, p. 50.

(a) The 1902 estimate was not a legal adjudication of actual values.

Argument, p. 50.

(b) The 1902 estimate was without substantial basis and was largely pure guess.

Argument, p. 54.

(c) The field examinations of 1902, even if credited, show no system of under-valuation then existing.

Argument, p. 58.

— 9 —

b. The evidence of under-valuation is confined to the testimony of Tax Commissioners and field examiners.

Argument, p. 63.

c. This evidence is incompetent. Argument, p. 63.

There is nothing in the record reasonably tending to overthrow the presumption of correctness attending the official assessments of the supervisors. It follows that the assessments made by the assessing officers in 1902 represented the cash value of the general properties of the state as nearly as it is practicable to obtain it, and that the claim of substantial under-valuation of the general properties of the state in 1902 is unsustained.

#### SECOND.

Even should an aggregate under-valuation of the general properties of the state be found to have existed in 1902, such under-valuation was not fraudulent or intentional, nor was it the result of a concerted rule of conduct. Argument, p. 64.

#### THIRD.

Whatever general property under-valuation may have existed in 1902 was sporadic and not general throughout the state. Argument, p. 70.

#### THE ADJUDICATED CASES.

1. In the cases in which relief has been granted on account of under-valuation of other property, the facts bear no reasonable relation to those in this case. Argument, p. 70.

2. In numerous cases where evidence of unjust discrimination was much greater than here, relief has been denied.

Argument, p. 75.

#### II.

#### UNDER-VALUATION OF APPELLANT'S RAILROAD PROPERTIES.

Appellant's railroad property was substantially under-valued by the State Board of Assessors in the 1902 assessment

thereof. This under-valuation was greater than the claimed general property under-valuation.

FIRST.

The Rule of Evidence.

It was competent for the defendant to show that appellant's railroad property was under-assessed by the State Board of Assessors in 1902 without proving that such under-valuation was fraudulent and intentional. Prejudicial discrimination is the basis of right to relief, and the burden of proving the same is on complainant.

Argument, p. 82.

- Pelton vs. Nat'l Bank, 101 U. S. 143.  
Cummings vs. Nat'l Bank, 101 U. S. 153.  
1st Nat. Bank vs. Lucas County, 25 Fed. 749.  
Taylor vs. L. & N. Ry. Co., 31 C. C. A. 537.  
Chicago Union Trac. Co. vs. B'd of Equalization,  
114 Fed. 557.  
Ry. Co. vs. Coulter, 131 Fed. 282.  
Coulter vs. Ry. Co., 25 Sup. Ct. Rep. 342.  
Bureau County vs. R. R. Co., 44 Ill. 229.  
R. R. Co. vs. Commissioners, 54 Kas. 781.  
Randall vs. Bridgeport, 63 Conn. 321.  
Ex parte Bridge Co., 62 Ark. 461.  
Bank vs. Miller, 19 Fed. 372.  
Louisville Trust Co. vs. Stone, 107 Fed. 305.  
Keokuk Bridge Co. vs. Ill., 161 Ill. 514.  
Alexander vs. Thomas, 70 Miss. 517.  
Wagoner vs. Loomis, 37 Ohio St., 571, 582.  
Louisville Ry. Co. vs. Commonwealth, 49 S. W. 486.  
State vs. West. Union Tel. Co., 165 Mo. 502.  
Southern Ry. Co. vs. N. Carolina Corp. Com., 104  
Fed. 700.  
Railroad & Telephone Cos. vs. B'd of Equalizers,  
85 Fed. 302.

Judson on Taxation, Sec. 463, p. 609.  
Williams vs. Mears, 61 Mich. 87.  
Canfield vs. Bayfield Co., 74 Wis. 60.  
Mercantile Nat. Bank vs. Hubbard, 98 Fed. 465, 469.  
Cooley on Taxation (3rd Ed.), 1443, and cases  
cited.  
Cooley on Taxation (3rd Ed.), 751, 752.  
Muskegon vs. Boyce, 123 Mich. 540.  
Moss vs. Cummings, 44 Mich. 361.  
State vs. Thayer, 69 Minn. 170, 174.  
People vs. Van Nostrand, 24 N. Y. Suppl. 513.

SECOND.

The assessments of appellant's railroad property did not in fact represent the good faith judgment of the State Board of Assessors.

Argument, p. 92.

THIRD.

Appellant's railroad property was in fact substantially under-valued in the 1902 assessment.

Argument, p. 100.

1. The general condition of the Michigan Central system.

Argument, p. 100.

a. Of what the system consists and the Michigan proportion thereof.

Argument, p. 100.

b. The physical valuation and a comparison between that valuation and bond values.

Argument, p. 101.

c. The market value of Michigan Central stock.

Argument, p. 103.

d. Appellant's prosperity as compared with railroads generally.

Argument, p. 105.

e. Appellant's traffic has steadily increased for many years.

Argument, p. 105.



f. Net earnings as reported.

Argument, p. 105.

g. Practice of paying for improvements from operating expense.

Argument, p. 106.

h. Appellant's operating expense ratio as affected by charging additions and betterments thereto.

Argument, p. 107.

i. Dividends paid by appellant.

Argument, p. 109.

j. Net returns to stock and bond investors.

Argument, p. 110.

2. The appraisal of the railroad as a unit including both physical and non-physical values and the apportionment thereof upon a track mileage basis, is proper.

Argument, p. 111.

Adams Express Co. vs. Ohio, 165 U. S. 194.

Am. Ex. Co. vs. Indiana, 165 U. S. 255.

Adams Exp. Co. vs. Ohio, 166 U. S. 185.

Gulf, etc. Ry. Co. vs. Hewes, 183 U. S. 66.

Pullman Palace Car Co. vs. Penna., 141 U. S. 18.

Maine vs. G. T. Ry. Co., 142 U. S. 217.

New Orleans Ry. Co. vs. New Orleans, 143 U. S. 192.

Taylor vs. Secor (State R. R. Tax Cases), 92 U. S. 575.

P. A. Mich. 1901, p. 238, Sec. 5.

Adams Express Co. vs. Ohio State Auditor, 166 U. S. 185.

P. A. Mich. p. 242, Sec. 8.

3. The taking of franchise values into account in determining the assessed valuations of railroad properties under the Michigan ad valorem tax law does not create lack of uniformity of taxation nor does it put railroad properties on a different basis than property generally in the state. Franchise values,



where found to exist, are equally taxable under the general statute and under the railroad ad valorem tax law.

Argument, p. 114.

a. Both railroad property and general properties are required by statute to be assessed on the same basis, namely, true cash value.

Argument, p. 114.

C. L. Mich. 1897, Secs. 3847 and 3850.

Citizens St. Ry. Co. vs. Common Council, 125 Mich. 682.

b. Appellant's franchise was not separately valued, but such separate valuation would not be invalid.

Argument, p. 117.

4. The methods of valuation employed have received the approval of the courts as furnishing a safe guide for the purpose of determining values for taxation. Argument, p. 122.

Col. So. Ry. Co. vs. Wright, 151 U. S. 470.

Ry. Co. vs. Backus, 154 U. S. 424, 431.

People vs. Hicks, 40 Hun, 598.

People vs. Assessors, 2 N. Y. S. 240.

People vs. Reid, 64 Hun, 553.

People vs. Kalbfleish, 49 N. Y. S. 546.

West. U. Tel. Co. vs. Taggart, 163 U. S. 1, 21

Bridge Co. vs. Ky., 166 U. S. 150.

Taylor vs. R. R. Co., 88 Fed. 350. (C. C. A. 6th Cir.)

Chicago U. Trac. Co. vs. St. B'd., 112 Fed. 607.

Porter vs. R. R. Co., 76 Ill. 561, 589.

B'd of Equalization vs. People, 191 Ill. 528.

State vs. Savage (Neb.), 91 N. W. 717.

Sanford vs. Poe, 69 Fed. 546. (C. C. A. 6th Cir.)

5. The basis on which the computations of value of appellant's railroad properties were made by the different methods, and their results.

Argument, p. 132.

## Argument.

### I.

#### UNDER-VALUATION OF GENERAL PROPERTIES.

No such under-valuation of the general properties of the state for the year 1902 is shown by the evidence as can entitle appellants to relief.

#### THE RULE OF LAW.

To entitle appellants to relief it must appear that the average rate of taxation assessed upon the general property of the state was wrongfully increased, to appellants' detriment, by an intentional, fraudulent, general and substantial under-valuation of the general properties of the state. The burden of so proving is upon appellants.

It is well settled that the mere fact that a portion of the property on a given roll or subject to a given tax, is under-valued or even omitted entirely from the assessment roll, will not invalidate the tax upon other property on the same roll and thus injuriously affected by such under-valuation or omission, nor will it even entitle the complaining party to a reduction of his tax.

The rule is now thoroughly settled, not only in Michigan and in the state courts generally, but by the decisions of this Court, that an under-valuation of property, in order to constitute an unlawful discrimination entitling the injured party to relief, must be not only intentional, purposeful and fraudulent, but it must be something more than sporadic or occasional. It must be not only **habitual** and to such an extent as to create a "**rule of conduct**," but this rule of conduct must be one of general adoption. More than this, the under-valuation must be substantial and well defined, as well as clearly proven.

State R. R. Tax Cases, 92 U. S. at p. 612.

Cummings vs. Nat. Bank, 101 U. S. 153, 155.

Nat'l Bank vs. Kimball, 103 U. S. 735.

Supervisors vs. Stanley, 105 U. S. 305, 318.

**Stanley vs. Supervisors**, 121 U. S. 548.

**Bank vs. Perea**, 147 U. S. 87.

**New York State vs. Barker**, 179 U. S. 279, 284.

**Coulter vs. L. & N. R. R. Co.**, 125 Sup. Ct. Rep. 342.

**Merrill vs. Humphrey**, 24 Mich. 170.

**Walsh vs. King**, 74 Mich. 350.

**Solomon vs. Oscoda Township**, 77 Mich. 365.

**Auditor General vs. Prescott**, 94 Mich. 190.

**Auditor Gen'l vs. Improvement Co.**, 129 Mich. 189.

As was said by this Court in **State Railroad Tax Cases**, (supra) at page 612:

"Perfect equality and perfect uniformity of taxation as regards individuals or corporations or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large state \* \* \* the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

And again, as was said by this Court in **Stanley vs. Supervisors**, at page 550:

"Absolute equality and uniformity are seldom, if ever attainable. The diversity of human judgments and the uncertainty attending all human evidence preclude the possibility of this attainment. Intelli-

gent men differ as to the value of even the most common objects before them—of animals, houses and lands in constant use. The most that can be expected from wise legislation is an approximation to this desirable end; and the requirement of equality and uniformity found in the constitutions of some states is complied with when designed and manifest departures from the rule are avoided.”

In **New York State vs. Barker** (supra) where an assessment of corporate property was attacked upon the ground of under-valuation of other properties upon the same roll, in violation of a statute requiring the corporate property to be taxed in the same manner as the other personal and real estate of the county, this Court said:

“To raise the question which the plaintiff in error seeks, it was therefore obviously necessary to prove as a fact that there was **habitual** violation of law by under-valuation; that, in the language of Mr. Justice Miller, in *Supervisors vs. Stanley*, 105 U. S. 305, 318, the assessors ‘habitually and intentionally, or by some rule prescribed by themselves, or by someone whom they were bound to obey,’ under-valued real estate for assessment in New York City; or, as stated in *Cummings vs. National Bank*, 101 U. S. 153, 155, that **a rule or system of valuation** had been adopted by those whose duty it was to make the assessment which was **designed to operate unequally**, and to violate a fundamental principle of the construction, and that such rule had been applied not solely to one individual, but to a **large class** of individuals or corporations.”

The case of **Dundee Mtge. etc. Co. vs. Parrish**, 24 Fed. 197, is authority only for the proposition that concert of action can be inferred from the prevalence of the same practice in a

number of counties in various parts of the state. It relates only to the sufficiency of the proof, not to the necessity of the existence of the fact.

In **Stanley vs. Supervisors** (*supra*) where complaint was made of under-valuation of other properties affected by the same taxation, it was said by this Court, (at page 548):

"To recover in this case the plaintiff was required to prove under the decision when the case was first here (*Supervisors vs. Stanley*, 105 U. S. 305) that 'the assessors habitually and intentionally, or by some rule prescribed by themselves or by someone whom they were bound to obey' assessed the shares of the national banks higher in proportion to their actual value than other moneyed capital generally."

In **Bank vs. Perea** (*supra*) a law of New Mexico required property to be assessed at its cash value. The plaintiff's property was originally assessed at its full value, while the other property was assessed at 70 per cent. The bank applied to the board of equalization, which reduced its assessment to 85 per cent. This Court, speaking through Mr. Justice Brewer, said:

"Surely upon the mere fact that other property happened to be assessed at 30 per cent. below the value, when this did not come from any design or systematic effort on the part of the county officials, and when the plaintiff has had a hearing as to the correct valuation, etc., it cannot be that it can come into a court of equity for an injunction, or have that decision of the board of equalization reviewed in this collateral way."

In **Coulter vs. L. & N. R. R. Co.** (*supra*) where the railroad company claimed that general property was under-valued and the rate of taxation on appellee's railroad property thereby wrongfully increased, this Court said:

"It is not contended that a mere under-valuation would be enough. It is admitted that it must have been systematic and intentional."

The case of **Cummings vs. Nat'l Bank** (supra) is not authority for the proposition that courts will take judicial notice of the existence of a practice of under-assessments.

In **New York vs. Barker** (supra) at page 286, this Court directly held to the contrary of this proposition, saying:

"This Court did not presume a violation of duty in **Cummings vs. Nat'l Bank** (supra). On the contrary, the bill alleged the facts and the testimony supported the allegations. In extenuation of the practice alleged and proved the Court remarked in passing (p. 162) that it was not limited to the state of Ohio and that it was matter of common observation that in the valuation of real estate the rule was habitually disregarded. Although the Justice who wrote the opinion did speak of the fact as matter of common observation, neither he nor the Court took judicial notice thereof, but only those facts which had been pleaded and testimony to sustain which had been duly given, formed the basis of judicial action. We will not, and ought not, to presume a violation in the absence of allegations and proofs to that effect."

We submit that the decisions to which we have referred conclusively establish the rule as stated above in this brief.

#### **THE EVIDENCE OF GENERAL PROPERTY UNDER-VALUATION.**

We insist that the evidence in the case fails to show that there was any substantial under-valuation of the general properties of the state contained in the 1902 assessment. We also insist that the evidence utterly fails to show that such under-valuation as may have existed in some cases, or in some localities was fraudulent and intentional, or that it was general and

the result of concerted action on the part of assessing officers.

The discussion of the facts involves three questions:

1. Was there substantial under-valuation in the 1902 assessment of the general properties of the state, and if so, what was the extent of that under-valuation?

2. If such under-valuation is found to have existed, was it fraudulent, intentional, and the result of a concerted rule of conduct?

3. In case the aggregate assessment of the general properties of the state is clearly shown to be substantially below the actual aggregate value thereof, and in case there is found to have been in given instances or localities, intentional and fraudulent under-valuation, was that condition general throughout the state?

Unless all three of these questions can be answered in the affirmative, it is clear that the appellant has no ground of complaint upon the score of alleged general property under-valuation. We submit that it is clear upon this record that these questions cannot be so answered.

**FIRST.**

**THERE WAS NO SUBSTANTIAL UNDER-VALUATION OF THE GENERAL PROPERTIES OF THE STATE IN THE YEAR 1902.**

The inquiry upon this branch, as upon the other two branches of the subject, relates directly and solely to the conditions affecting the assessment of 1902. Were it conceded that there was a substantial under-valuation for previous years, an under-valuation in 1902 by no means follows. On the contrary, the history of the movement for equal taxation, including the history of the organization, and workings of, and results accomplished by the Tax Commission from 1899 to 1902 effectually disprove the allegation that substantial under-valuation existed in the last named year.

1. **Organization and Powers of the Commission, and General History of the Movement for Equal Taxation.**



The State Tax Commission was organized in 1899.

P. A. Mich. 1899, No. 154, p. 227; R. p. 337 and following.

The object of the Act, as stated in its title, was to provide "for the creation of a board of state tax commissioners, charged with the duty of enforcing this Act (the general tax law), and exercising supervisory control over officers administering the general tax laws of this state, and reporting to the Legislature thereon, and empowered in certain cases to **review assessment rolls and correct the same, or add thereto,** and to provide for the **assessment and taxation of property omitted from the assessment rolls.**"

The duties of the Commissioners were, in general, "to take such measures as will **secure the enforcement** of the provisions of this Act, to the end that **all the properties** of this state liable to assessment for taxation shall be **placed upon the assessment rolls and assessed at their actual cash value.**" (Sec. 149, p. 230.)

For the purpose of securing this result it was made the duty of the Commissioners to confer with, and advise assessing officers as to their duties under the Act, and to institute proper proceedings to enforce the penalties and liabilities provided by law against public officers, officers of corporations, and individuals, failing to comply with the Act, and to prefer charges to the Governor against assessing and taxing officers who violate the law or fail to perform their duty with reference to assessment and taxation, with power to call upon the Attorney General and any prosecuting attorney in the state for assistance. (Sec. 150, Subd. 2, p. 230.)

The Commissioners were also empowered to receive complaints and make investigation regarding fraudulent or improper assessments "and to take such proceedings as will **correct the irregularity** complained of if found to exist." The Act also required that every county in the state be visited by



at least one commissioner as often as once each year, for the purpose of hearing complaints, collecting information regarding the workings of the law, compelling compliance with the law, punishing violations thereof, and making proper suggestions as to amendments and changes. (Sec. 150, Subd. 3 and 4, p. 231.)

The Commissioners were also authorized to require from any officer in the state, upon prescribed forms, such reports as the Commissioners might determine would assist in ascertaining assessed valuations and equalized valuations of all taxable property throughout the state "to the end that it may have complete and statistical information as to the practical operation of the Act." (Sec. 150, Subd. 5, p. 231.)

By this Act the State Tax Commissioners were given powers not then enjoyed by **any other commission anywhere in the United States**, namely, original jurisdiction over the acts of all assessing officers, including power to correct all improper or illegal assessments, to add new property to the rolls, and even to make **entirely new assessment rolls**.

1902 Report of State Tax Commission, p. 17;

Transcript of Record, p. 341.

It will thus be seen that the powers conferred upon the Michigan Tax Commissioners **as early as 1899** were as complete and sweeping as could well be conferred.

**Law declared constitutional.** This Act was declared constitutional June 19, 1900, and the validity of the important and sweeping provisions above enumerated, fully sustained.

Tax Com'nrs. vs. Assessors, 124 Mich. 491.

Tax Com'nrs. vs. Quinn, 125 Mich. 128.

**Membership of the Commission.** The Commission was organized July 1, 1889. Its original members were Messrs. Campbell, Freeman and Oakman. Mr. McLaughlin afterwards took Mr. Campbell's place. Messrs. Jenks and Sayre were added later. Mr. Dust took Mr. Oakman's place, and

Mr. Kerr took Mr. Jenks' place in 1901. (Twiss' Test., R. p. 60.)

a. **The assumption that the general properties of the state were assessed in 1899 at but 65 per cent. of value, was largely guess-work.**

The Commission began its work and prosecuted it throughout upon the assumption contained in the message of Governor Pingree to the Legislature in 1899, that the general properties of the state were assessed on an average at but 65 per cent. of their actual value.

Gov. Pingree's Mess. to Spec. Sess. of Legis., Oct. 10-15, 1900.

Transcript of Record, pp. 235-6.

This assumption was largely guess-work. It is not claimed to have been based upon a critical or official investigation. In view of the conditions under which it was made, it would be unreasonable to expect the estimate to err in the direction of conservatism.

b. **This assumption of a 65 per cent. assessment of general property was not an adjudication by the Governor of the existence of such specific undervaluation.**

An adjudication necessarily implies a duty or authority to finally determine the question with respect to which the adjudication is asserted. The Governor was not charged with the duty of determining the true value of the taxable property of the state. It is sufficient to say that the Governor utterly disclaimed any knowledge upon, or investigation of the subject. He expressly says: "In these comparisons I use 65 per cent. of the full cash value, because that is the average of assessments throughout the state, according to a computation made by a member of the State Board of Tax Commissioners."

Mich. House Journal, Extra Sess. Oct. 10-15, 1900,  
p. 14.

It is not claimed that any member of the State Tax Com-

mission has made any computations or investigations justifying the adoption of 65 per cent. as the measure of under-valuation in 1899.

It was also suggested in argument that Prof. Adams adopted 65 per cent. as the ratio of assessed value to actual value of the general properties, in his report of the value of the Railroad properties in 1900, but Prof. Adams expressly says that he simply assumed that relation and that such assumption did not involve a determination of the value of the general property, or that it was in fact under-valued. (R. pp. 526-7, 817-18.)

Nor could any report of the Tax Commission to that session of the Legislature have been such an adjudication. The Tax Commission was not charged, so far as the session in question is concerned, with the duty to report on the value of the general properties in the state. The Tax Commission is required to report to the Legislature "at the beginning of the regular sessions" thereof, the true valuation of the general properties of the state and the rate of taxation the same are paying. (P. A. Mich. 1899, p. 232, subd. 9.) The session to which the Governor's message in question was sent was not a regular session (which is required to be held in January of each odd numbered year (Mich. Const., Art. IV, Sec. 33), but a special session held October 10th to 15th, 1900 (Tr. of Rec., p. 235.) But not only had the Commission no authority to make such report, it in fact did not attempt to do so. (Mich. House Journal, Extra Sess. Oct. 10 to 15, 1900.)

The Tax Commission thus from the start assumed the attitude of having a mission to bring the assessed valuation up to this assumed actual valuation as speedily as possible. It is conceded by the Commissioners that they have never lost sight of this mission. This fact is important in considering both the effectiveness of the Commission's work and the weight to be given the views of its members as to the situation

existing in 1902. The partisan conduct of Commissioners Freeman and Sayre in their assessments of appellant's railroad properties and in voluntarily making affidavits in support of appellant's application for an injunction against the officers of the state they were representing will be hereafter referred to.

**The 1899 valuation.** The assessed valuation of the general properties of the state for 1899 was \$968,189,087. If Gov. Pingree's radical estimate were to be adopted, it would mean that the correct valuation would be \$1,483,369,167. The results of the work of the Commission throughout have shown not only the extravagance of this general and primary assumption, but the equally great extravagance of the specific opinions and estimates of the controlling spirits upon the Commission as promulgated from time to time.

It may be suggested by appellant's counsel that it was the assessment of 1900 (rather than 1899) which Gov. Pingree assumed was but 65 per cent. of actual value. Such suggestion can only be based upon the fact that Gov. Pingree made reference in the report to the 1900 railroad valuations, and that the 1900 general property assessments had been made when the message in question was written, and so must have been in his mind.

This suggestion is clearly overthrown by the fact that the average rate of taxation in the state for the year referred to in the Governor's Message was given as  $2\frac{1}{2}$  per cent., while the average tax rate for 1900 was a trifle more than  $1\frac{1}{2}$  per cent. (\$15.4697 per M.), while that for 1899 was 2.11 per cent. (\$21.1653 per M.). The 1899 general property assessment was thus clearly the one he had in mind. (Tax Com. Rept. for 1900, p. 79, and Tables No. 86 and 87 therein.)

**The means employed by the Commission.** The year 1899. Mr. Freeman, the most active member of the Commission (and the only member who has served continuously since its organization) testified that during the first year (1899) the Com-

missioners traveled over the state quite extensively, covering the Upper Peninsula and twelve or fifteen counties in the Lower Peninsula, visiting and addressing as many boards of supervisors as possible during their sessions, and talking with each assessing officer personally in the counties so visited—all the time carrying on a campaign of education, instructing assessors constantly as to the meaning of the law and **their duty under it to assess all property at cash value.**

Freeman's Test., R. pp. 106-9.

Tax Com'nrs Rept. for 1902, p. 17; R. 340.

This same year the preparation of the comparative table of assessments and sale valuations covering the entire of the state, was begun by the Commission. The registers of deeds in every county were required to furnish a list of descriptions sold during the year, together with the consideration named in the deeds of conveyance. The county treasurers were required to furnish a statement of the assessed valuation of the properties so shown in the reports of the registers of deeds. This comparative schedule was completed in the early spring of 1900.

Freeman's Test., R. 109.

Twiss' Test., R. 59.

**The year 1900.** In this second year the work of visiting of the assessors was continued, special attention being paid to **conferences with individual assessors.**

The comparative tables of sale considerations and assessed valuations being accessible, comparisons were readily made between two classes of valuations. While there were no general reviews of the rolls of entire assessing districts in 1900 (except in St. Ignace and Mackinac Island), special reviews were had in connection with the conferences with individual assessors, and the campaign of education was actively carried on.

Twiss' Test., R. 67.

Freeman's Test., R. 111.

The time of the Commission was "fully occupied in special reviews where properties of great value were omitted from the roll or grossly over-valued, or where it seemed advisable, on account of the character, extent and value of property involved, to consider it carefully and establish a standard for the future guidance of assessing officers." This condition existed up to 1902.

Tax Com'nrs. Report for 1902, p. 22; R. p. 343.

With the view of bringing up the assessments to substantial cash value as speedily as possible, the **first reviews** were had in the counties lowest assessed.

Twiss' Test., R. 66, 67.

Sayre's Test., R. 149.

The Commissioners testified, not only without division, but without dispute, that the supervisors as a rule, **showed from the start, a willingness to comply with the law.** (Dust's Test., R. 75.)

The report of the Tax Commissioners to the Governor is to the same effect, and adds that "The supervisors showed an active and intelligent interest in the subject and expressed a desire for a better knowledge of the law relating to their work, and manifested a willingness to be governed by it."

Tax Com'nrs. Rept. for 1901 and 1902, p. 16; R. 340.

It is also the undisputed testimony of the Commissioners that **they raised property to actual value** whenever they found it below. (Twiss' Test., R. 65-66; Sayre's Test., R. 148.)

The marked effect of the work of 1899 and 1900, is seen in the fact that while in the latter year charges were preferred to the Governor against assessors for non-assessment, four officers being removed (all in the one county of Roscommon, which confessedly was at cash value by 1901—R. 61) it was never afterwards necessary to make any charges **whatever anywhere.** (Twiss' Test., R. p. 69.)

The net result of the work of the Commission in 1899 and

1900 was that the assessed valuation of the general properties of the state was increased from \$968,189,087 in 1899 to \$1,317,450,028 in 1900, **an increase of more than 349 million dollars**, and an increase of 36 per cent. above the assumed 65 per cent. valuation of 1899. The average tax rate was, by this increase in assessed valuation, reduced from \$21.165 to \$15.469 per one thousand dollars of valuation. (Tax Com'nrs 1900 Rept., p. 79, and Tables 86 and 87 accompanying.)

**The year 1901. Field examinations.** This year the Commission entered upon a system of so-called "field examinations," by which men employed by the Commission were sent over the state to inspect and estimate the values of the property of which sales records had been obtained from the registers of deeds previous to the spring of 1900, and later of a class of property known as "pick-ups," being parcels selected at random by the field men, the **assessed valuation** of such properties, both sales and pick-ups, being compared with the **estimated** valuations made by the field men as a basis for a determination by the Commission of the relation between the assessed valuations and actual values of the **entire districts** in which such comparisons of **individual** assessments and individual **estimates** were so made.

This system was kept up during 1902 as well. During 1901 and 1902 numerous general and special reviews were held, the **state being practically covered by such reviews.**

In 1901 the State Board of Equalization met and the Commissioners conceived it their duty to furnish that Board information which should enable it to make not only a relatively uniform valuation between the various counties, but to determine the actual cash value of the properties of the state. Accordingly, the Commission, acting largely on the reports of the field men, presented to the Board of Equalization estimates as to the value of the general properties of the state. The valuations placed by the assessing officers upon the general



properties of that year (1901) had aggregated \$1,328,632,691. The Tax Commissioners in their report to the Board of Equalization, **estimated** the values of these general properties at \$1,702,471,014. The equalized valuations of the various counties as adopted by the State Board of Equalization, aggregated \$1,578,100,000.

It is expressly admitted that there is no evidence that the State Board of Equalization attempted to determine actual values. (R. 288.)

In 1902 the assessed valuation of the general properties of the state was \$1,418,251,858.

The estimated value placed by the State Board of Assessors upon the general properties of the state for that year, for the purpose of determining the average rate of taxation to be assessed by the State Board of Assessors upon railroad property was \$1,715,000,000.

The Supreme Court of Michigan held that the State Board of Assessors had no jurisdiction or authority to make the estimate in question.

B'd of Education of Detroit vs. St. B'd of Assessors,  
133 Mich. 116.

It is upon the relation between the illegal 1715 million **estimate** of the State Board of Assessors, and the 1418 million aggregate valuation of the **official assessments made by the assessing officers**, that the allegation is now made by complainants that the assessment for 1902 was but 82.4 per cent. of the real value of the general properties of the state. The record clearly shows that no reliance can be placed on this comparison.

## 2. Results of the Work of the Tax Commission Before the 1902 Assessment.

The actual and admitted results of the efforts of the Tax Commissioners to bring assessments to cash value, urgently pushed for more than three years before the 1902 assess-



ment was completed, of itself strongly discredits the claim of a substantial and general property under-valuation in 1902.

As already shown, from the organization of the Commission in 1899, both boards of supervisors collectively, and assessors individually, were constantly instructed by the Commissioners to assess at cash value, and the testimony is express and uncontradicted that the supervisors from the start showed a willingness to comply with the law; that the county boards of equalization usually followed the recommendations of the Tax Commission; that the counties lowest assessed were first reviewed by the Commissioners; that the latter raised assessments to cash value whenever they found them below, and that the influence of the Commission extended even beyond its actual work. (Bolt's Test., R. 194.) It is the testimony generally of the Commissioners that the assessments grew steadily better from the start. (Dust's Test., R. 70; Sayre's Test., R. 148; McLaughlin's Test., R. 102.)

But we are not left to general statements of the increases brought about and the actual condition in 1902.

Commissioner Freeman testifies that the Lower Peninsula was **nearly covered** in 1901, and the Upper Peninsula **largely covered**. (R. p. 129.)

The 1902 report of the Tax Commission shows that reviews had been had in practically all the counties of the state and in all the principal cities. (R. pp. 343-5.)

Commissioner Sayre, who is one of the Commissioners who made the affidavit in support of complainant's bill in this case, not only testified that there was a general raise in a portion, or the entire of all the counties of the state before 1902, but also enumerates thirty counties in which special reviews were had in the year 1901, and sixteen counties in which reviews, partly general and partly special, were had in 1902, and says that at all general reviews the entire county was brought up to cash value. The object of the special reviews

was to bring to cash value the parts so reviewed, which were the parts considered the lowest assessed. Such property was of course brought to cash value. (R. pp. 148, 149.)

**Efforts were made in several special directions** for the increase of assessments. The estates of deceased persons were carefully looked after. (R. p. 339.)

Assessors had been in the habit of assessing credits at their face value. They were taught by the Commissioners to assess them at their real value.

1902 Report Tax Commission; R. 340.

The values of timber, lumber and mills were specially increased. (R. p. 345.)

The assessment of mining property, both iron and copper, seems to have been brought to a satisfactory basis, the value of the copper mines being based upon the market value of the stock, and that of the iron mines by satisfactory assessment, either through the assessors or by action of the Tax Commissioners themselves.

McLaughlin's Test., R. pp. 100, 102.

Communication from State Board of Tax Com'rs  
to B'd of Equalization, R. 291.

Gullifer's Test., R. 118.

Special attention was paid to securing the assessment of all mortgages.

Freeman's Test., R. 111.

1902 Tax Commission's Report, R. 339.

Letters of instruction were given to supervisors in the direction of raising assessments of public service corporations generally. (R. p. 339.)

a. **The property of the state generally had been brought to substantially cash value by the end of 1901.**

**The results of these special efforts** showed the following special and immense increases in valuation by the year 1902:

There had been added to the valuations of **street railways** in the state nearly 10 millions of dollars.

Dust's Test., R. 77.

1902 Tax Commission's Report, R. 342.

There had been added on account of **summer resort property** 2 millions of dollars.

1902 Tax Com. Report, R. 342.

The assessment of the city of **Grand Rapids** had been raised from 28 millions to 71 millions.

McLaughlins' Test., R. 88.

**Port Huron** had been increased 4 millions and the action of the Commission had been commended by the city authorities.

1902 Tax Commission's Report, R. 343.

Delta County had been raised \$900,000 in 1902.

Rolph's Test., R. p. 161.

The additions to the assessments of the estates of deceased persons added in five counties alone about 3½ millions of dollars. (R. p. 339.)

The **reviews of 1902 alone** had added 32 millions to the assessed valuation of the state. (Tax Com. 1902 Rept., R. 345.)

The most important cities and counties in the state had been admittedly raised to approximately or absolutely 100 per cent. before the 1902 rate was fixed.

The large and rich counties of Bay, Saginaw, St. Clair, Macomb, Jackson and Kalamazoo had been brought to cash value. (Twiss' Test., R. p. 66; Dust's Test., R. p. 80.)

The city of Detroit (the largest in the state) had been brought to actual cash value, and the entire of Wayne County, in which it is situated, apparently was not much, if any, below cash value. (Dust's Test., R. p. 74a.)

[The testimony contained in R. p. 74a was omitted by a clerical error from the transcript and its insertion will presumably be agreed to by counsel.]

Grand Rapids and Saginaw, the two next largest cities of the state, had been raised to cash value, or so nearly so that the Commissioners did not care to make any further raises there.

McLaughlin's Test., R. 88, 100.

Freeman's Test., R. pp. 25, 130-131.

Gullifer's Test., R. p. 118.

Kent County as distinguished from the city of Grand Rapids, had been brought to cash value. (Freeman's Test., R. p. 130.)

Washtenaw County, another of the large and rich counties, is conceded to have been well assessed. (Dust's Test., R. p. 75; Freeman's Test., R. p. 130.)

Commissioner Sayre, one of the most radical of the Commissioners, admits that the rich county of Genesee was assessed to at least 90 per cent. cash value. (R. p. 149.)

Charlevoix County had evidently been brought up practically to cash value, as only the worst parts of it were reviewed and those reviewed were brought to cash value. (McLaughlin's Test., R. p. 87.)

Roscommon County, whose assessing officers had been complained of in 1900, was admittedly assessed high enough in 1901. (Twiss' Test., R. p. 61.)

**Over-valuation** in some districts is even shown.

Rolph's Test., R. p. 162; Bolt's Test., R. p. 199; Stone's Test., R. p. 217; Twiss' Test., R. p. 67.)

The testimony was express that uniformity had been accomplished "in numerous counties before the 1902 average rate was fixed." (Dust's Test., R. p. 74; Bolt's Test., R. p. 194.)

The 1902 report of the Tax Commission, after felicitating the state upon the great increase in assessed valuations from 1899 to 1902 (namely, from 968 millions in 1899 to 1317 millions in 1900, and again to 1328 millions in 1901, and again

to 1418 millions in 1902) declares that the fact "that the assessment increase for 1901 was less than 1902 emphasizes the force which the Commission has exercised over these assessments when in full operation," adding: "It must not be expected that it can keep up these great increases in the future." (R. pp. 348-9.)

This report asserted that from 1899 to 1902 the assessed valuation of personal property (which had been believed to have been more greatly under-assessed than real estate) had increased over 132 per cent., and that every county in the state showed a substantial increase. (R. p. 350.)

In view of this situation, existing at the time the 1902 assessment in question was made, as shown affirmatively by the testimony of the Commissioners and their employees and of the official reports of the Tax Commission, the claim of appellant that the assessed valuation for 1902 was but 82 per cent. of actual value, is on its face so unreasonable as to require clear and substantial evidence to overthrow the strong presumption to the contrary.

3. The evidence presented by appellant utterly fails to overthrow the presumption of the legality of the official valuations of the assessing officers made under this close supervision of the Tax Commission and to sustain the burden of proof that property generally was substantially under-valued in the 1902 assessment.

The evidence relied upon by appellant to sustain this burden is of four kinds: (1) The estimates of field men compared with actual assessments of supervisors. (2) The Tax Commissioners' 1901 estimate of the value of the general properties of the state as compared with the actual assessments for that year. (3) The equalized valuation of the general properties of the state as adopted by the State Board of Equalization in 1901. (4) The Commission's estimate of actual values in 1902.

**Evidence of under-valuation confined to Tax Commissioners and field examiners.**

It will thus be noted that the evidence of under-valuation, whether purposeful and general, or otherwise, on which appellant relies to overthrow the official assessments of the supervisors, is confined entirely to members of the Tax Commission, who seldom saw the assessed property (and who, when they did, raised it to their estimate of cash value), and to a few field examiners in the employ of the Commission. **The official assessments are not discredited by the testimony of any assessing officer.** More than this, out of the eight members who have served on the Commission since its organization, but four were produced as witnesses, and as seen later, but two of these attempt to seriously discredit the assessment of 1902 even on the score of actual under-valuation; while out of more than thirty field men who served as "examiners" during 1901 and 1902, but five are produced as witnesses to even an opinion of actual under-valuation.

**Incompetent evidence.** The appellee objected to the evidence of the opinions of these witnesses, both field men and Commissioners, as being incompetent and irrelevant.

(R. pp. 59-64, 70-74, 83, 84, 89-99, 107, 109, 110, 112, 113, 145-7, 160, 191-3, 214, 16, 221-3, 236.)

We submit these objections were well taken and will so clearly appear when the evidence presented by the witnesses is considered.

(1.) **The work of the field examiners, both in 1901 and 1902, was wholly unreliable and furnished a less safe estimate of values than the assessments made by the assessing officers.**

The field examinations made in 1901 were for the purpose of enabling the Tax Commission to present to the State Board of Equalization (which met in August of that year) an estimate of the value of the taxable property of the state. The

examinations of 1902 were for the purpose of reviewing the supervisors' tax assessments.

The five field examiners sworn are Bibbins, Bolt, Davidson, Rolph and Stone.

**The 1901 field examination was too hastily made to insure anything like accuracy.** This is freely conceded by the field men. In the language of Rolph: "It was a **hurried examination** to get some information for the Board to act upon at the time the State Board of Equalization met." (R. p. 162; see also, Bolt's Test., R. p. 190.)

**Inexperienced field-men were employed.** While some of the examiners had had a fair amount of experience, others were without anything like adequate experience for the work even of a careful assessment, to say nothing of the hurried and unsatisfactory estimates attempted to be made by them. Rolph, for instance, had never had any experience whatever in assessing or in valuing property. (R. p. 160.)

He was neither a farmer nor a woodsman. (R. p. 164.)

He admitted that he was totally incompetent to judge whether timber land was under-assessed or over-assessed. (R. p. 170.)

Yet he took part in making assessments of both farming and timber lands, and in providing the estimates upon which the allegations of an 82 per cent. assessment in 1902 is based.

Davidson was 29 years old, and **without any experience whatever** in assessing. (R. p. 220.)

**Non-resident field men.** For some occult reason, non-residents were always sent as field men. In no instance was a field man allowed to remain in his own locality where he was personally acquainted with values. (McLaughlin's Test., R. p. 100.)

Yet it is the undisputed testimony of field men Rolph, Stone, Bolt and Davidson that **resident supervisors were more competent judges of value than non-resident field men, and**



that the field men would have been more competent to value property in their own townships than in those in which they did not reside. (R. pp. 164, 196, 217, 223.)

Two methods of field examination were employed: (1) a comparison of sale prices with the considerations in deeds of conveyance, and (2) an estimate of values of "pick-ups" (or parcels arbitrarily selected) by field men and a comparison of these estimates with the supervisors' assessments.

**Comparisons of sale prices with considerations in deeds.**

By way of verifying the consideration stated in the deed for the purpose of its comparison with the assessed valuation, the examiner made no investigation beyond inquiring from one party to the transaction (and never more than one) what the consideration was, and sometimes took only the word of a third party, and of course without knowing whether or not the truth was told.

As stated by examiner Rolph: "What was told me by one of the parties to the transaction I took for the truth, and there were no exceptions to this as I remember. That is the reason that my verified considerations correspond exactly with the true value." (R. p. 164.)

See also Bolt's Test., R. 195; Stone's Test., R. 214.

But the examiner did not even always take the sale value as the actual value. (Bibbins' Test., R. 157.)

The Tax Commissioners reported to the State Board of Equalization in 1901 that comparatively few of the large number of considerations could be proved by actual inquiry of the parties to the sales or even of outside persons having knowledge of the transactions, and that "Experience has taught us that it is not safe to accept the amount of money stated in deeds as the true considerations of the sales, and that a per cent. obtained by comparison of these considerations with the assessments of the property described would bring many erroneous results and is of little value." (R. p. 290.)



As would naturally be expected it appears that the smaller valued properties changed hands more frequently than those of larger value, and therefore that a smaller percentage of the value of the township was taken into account by the method of comparing considerations on sales with assessed valuations than would be represented by the actual number of parcels compared. (Bibbins' Test., R. p. 157.)

We submit that this method of estimating values is completely discredited.

**Comparison of assessed valuation of "pick-ups" with examiners' estimates.** This class of estimates was even more unreliable than the other. For the purpose of comparing the assessed valuation with the estimated value, but **one piece in each section was taken** on an average, and not always even that. (Bibbins' Test., R. 131; Rolph's Test., R. 161.) Although it is conceded that two pieces to a section would have yielded a much more accurate means of comparison.

In estimating the value of farm lands, the field men did not drive upon the land, but looked at it, determining its soil, etc. **only from the road.** As stated by examiner Stone: "We took an average piece **by looking at the map, and drove by that piece,** forming an estimate about it." (R. p. 217.)

Just how an average piece could be selected by looking at the map is not explained.

As stated by Davidson: "As a rule we did not have a chance to get out and minutely examine properties, but **drove through the country and looked it over.** I have gotten out of my rig to examine property, but as a general rule did not." (R. 223.)

The "examiners" accordingly never even **saw** a majority of the lands in the township, nor usually more than one-fourth of the area of a given section, and even this usually only from the road. (Bibbins' Test., R. p. 157.)

The examiner did not inspect, even in the way stated, on

an average one piece in each section—some sections being entirely omitted. (Bolt's Test., R. p. 196.)

The examiner did not inspect, even in the way stated, on after his own estimates had been made, and sometimes did not even tell the latter the result of his estimate. (Bibbins' Test., R. p. 155; Davidson's Test., R. p. 223.)

And sometimes did not see the supervisor at all. (Stone's Test., R. p. 216.)

**Timber lands.** The inspection of the timber lands was admitted by the examiners to have been anything but close. The quality of the timber was never carefully considered. The estimate was so hastily made that the examiner would only "look in a general way at five 40's in a hundred." The method is thus described by examiner Bolt: "We estimated the timber upon a number of 40's by **walking upon** the 40 and estimating it in a **rough way**—not getting it down to a fine estimate, but looking it over." (R. p. 195.)

The process by which an 82 per cent. assessed valuation of property could be arrived at by such an "examination" is an interesting subject of study.

**Manufacturing plants.** The large manufacturing plants were as a rule left out of consideration as "pick-ups," only the smaller properties, in which the percentage of variation was naturally larger, being as a rule taken. (Rolph's Test., R. pp. 163, 167; Gullifer's Test., R. p. 114.)

As an illustration: Masonville was the most valuable township of Delta County. Its valuation was made up very largely by one or two large properties. These large properties were not included in the report for the reason that the examiners were totally unable to determine their value. (R. p. 163.)

In this way these men "examined" twelve counties in 5½ months, each man thus "examining" on an average one township each three or four days, assuming that each county had but 16 townships. As expressed by Bibbins: "In a **general**

way we took time enough to satisfy ourselves that we were **approximately correct** in reference to the conditions of the soil, taking into account its location, and the value of the buildings, and the proximity to market." (R. p. 158.)

As bearing upon the nature of the estimate thus rapidly made, Rolph says: "I can take you into townships I do not think you could **walk through** in six months." (R. p. 166.)

And again: "Where we did not visit the section we had no personal knowledge. We could not visit half the sections in one of those townships if we worked there a year and devoted all of our time to it, not to make a thorough examination of every description. I got an average as near as I could. I could not swear it was an average of the township." (R. p. 170.)

If the maximum of four days to a township were taken, it would result that a valuation of 7,768 acres, or 144 farms of 40 acres each (1 farm of 40 acres every 4 minutes of a 10-hour day) would be accomplished by each day's work of each examiner. Of course each farm was not so examined, but unless the farms throughout the township were identical in conditions affecting value, the insufficient nature of the examination is fully as pointed. Everyone connected with these estimates, both commissioners and examiners, admit that the greatest disparity of soil, improvements and values in every way prevailed throughout every township visited.

The bare statement of the proposition given above is all that is needed to show the utter unreliability of a system of examinations which assumes to discredit to the extent of a mathematical average of 17 per cent., the actual assessments made by the official assessors.

It is admitted by the field men that their own judgment upon the **same parcel** might easily vary at different times, and that estimates made a few hours apart might vary as much as 10 per cent. (Bolt's Test., R. 197.)

The judgment of the supervisors was admitted by the field men to be better than their own. (Rolph's Test., R. p. 166; Bolt's Test., R. p. 196; Stone's Test., R. p. 217; Davidson's Test., R. p. 223.)

It is not surprising that the estimates made by the examiners varied greatly from the assessments made by the supervisors; not simply that the estimates were usually larger, but that they were greatly different **without any uniform difference**. (McLaughlin's Test., R. p. 105; Bolt's Test., R. p. 190; Stone's Test., R. pp. 218-19; Davidson's Test., R. pp. 222-3.)

Bibbins and Bolt frankly state that one reason for the difference in valuation between the supervisors' assessments and the field men's estimates (apart from the greater knowledge possessed by the supervisors) is that the supervisors are **conservative** in their judgment, while the field men are uniformly **radical**. (Bibbins' Test., R. p. 156.)

As stated by Bolt: "The trend of the supervisor is to get a more conservative cash value, and the natural trend of the examiner—not so much now as in the past—has been to get a rather strained 100 per cent., rather high, and that is the natural make-up of the minds of the two." (R. p. 194.)

The latter admits that there is easily room for honest, substantial differences of opinion between the assessing officers and the estimating field men, even had the latter the same means of estimating as the former. (R. pp. 196-7.)

a. **The estimates made by the examiners were unsatisfactory to themselves.** (Bibbins' Test., R. p. 158; Bolt's Test., R. p. 167.)

The latter makes the sweeping admission: "I would not rely upon the examinations made in 1901 as a buying and selling proposition of property." (R. p. 198.)

Yet "cash value," as defined in the statute, is the price at which the property would sell.

b. **The field men's estimates proved equally unsatisfactory to the Tax Commissioners.**

This unsafe and unsatisfactory condition is freely admitted by Commissioner Dust and by Secretary Twiss. (R. pp. 75, 67.)

Secretary Twiss says that the field men's valuations were usually found on reviews by the Commissioners to be 10 per cent. to 15 per cent. too high. (R. p. 220.)

Yet, except where the Commissioners had held a general or special review and **brought the valuations up to cash**, they had to rely upon the valuations made by the field examiners. As an illustration of this unsatisfactory condition: In the case of the city of Grand Rapids the Commission found itself obliged to disregard the field notes of the examiners and decide that it was unnecessary to hold the review on the real estate assessments in that city. (McLaughlin's Test., R. p. 88.)

As will appear later, in the discussion of the Tax Commissioners' estimate presented to the Board of Equalization in 1901, the members of the Commission were obliged, upon their own examination in 1902, to decrease to the extent of many millions of dollars their estimates of the values of a large number of prominent counties in the state whose excessive valuations for 1901 helped to swell the Tax Commissioners' estimate for 1902, upon which the charge of under-valuation in this case is based.

c. **Differences of more than 100 per cent. in the relations between assessed value and estimated value result by including a larger instead of a smaller number of pieces in the comparison.**

Both the Commissioners and examiners admit that an **insufficient number of parcels** was taken and an **insufficient examination** had to determine the actual cash value of the properties inspected. Commissioner McLaughlin and examiners Burtlass and Stone all say (as is clearly apparent) that

the ratio of valuation depends upon the number of pieces examined. (R. pp. 102, 167, 236.)

Practical illustrations are given in the testimony of the great changes made in the ratio of "estimated value to cash value" by the inclusion of a larger or smaller number of pieces in an estimate. (McLaughlin's Test., R. p. 104; Rolph's Test., R. p. 162.)

Reference to examinations made by Stone shows that **differences of more than 100 per cent.** in the relations between assessed value and estimated value result by including a larger instead of a smaller number of pieces in the comparison. (R. p. 218.)

The examinations made were confessedly insufficient to justify an estimate of the value of an entire assessment district. By the method taken, no examination that failed to embrace all the property of the district would be sufficient. (Bolt's Test., R. p. 199; Stone's Test., R. p. 218; Davidson's Test., R. p. 223; Rolph's Test., R. p. 163)

d. **The value of the entire township was estimated on the basis of the small number of parcels examined.** Yet notwithstanding this insufficient examination both as to the number of parcels and as to the manner of inspection, and notwithstanding the great disparities in ratio between assessed and estimated values in the same township, as well as the changes in average produced by values and number of parcels taken into account, and notwithstanding the inequalities of soil, improvements and values in different parts of the township (Bolt's Test., R. p. 198; Bibbins' Test., R. p. 157) the value of an entire township was estimated **as if the same conditions of relative inequality prevailed throughout the township.** As expressed by field man Bolt: "I have said in my report that the township was worth about so many dollars, just as though I was looking at a farm. I would say, that is a nice township,

and in my opinion is worth a million dollars or eight hundred thousand." (R. p. 198.)

**Experience with Examiner Bolt's township.** The most convincing evidence of the utter unreliability of the 1901 examinations is shown by this experience: Field examiner Bolt had been for more than twenty years supervisor of Moreland township in Muskegon County (R. p. 187). It was his undisputed testimony that in 1900 he added 100 per cent. to the 1899 valuations of his township, and in the spring assessment of 1901 added about 30 per cent. more, and **that these two additions brought it up to cash value, at which it had since remained.** (R. pp. 192, 193.)

Under the system of non-resident examiners referred to, Moreland Township was "examined" in 1901 for the purpose of the Tax Commissioners' estimate presented to the State Board of Equalization. The examiners' "estimate" of the value of Moreland Township in 1901 was that its assessed valuation (shown by Bolt to have been at cash) was but **51.6 per cent.** of cash. (R. p. 322.)

No more convincing proof of the unreliability of this estimate could well be imagined.

We submit that the 1901 field examination is completely discredited.

(2.) The 1901 estimate of the Tax Commissioners as presented to the State Board of Equalization, was not only based upon the unreliable and discredited reports of the field men, but was shown by the subsequent experience of the Commissioners themselves to have been grossly extravagant and wholly unreliable.

(a.) This 1901 estimate was not an adjudication. The Tax Commission was not charged with the duty of making a determination of the value of the general property of the state in connection with the state equalization. Its duties with respect to values of taxable property, so far as the state



equalization is concerned, were simply "to be present at each meeting of the State Board of Equalization and furnish such information as said Board may require and that may assist said Board in the performance of the duties imposed upon it by law."

P. A. Mich. 1899, Sec. 150, Subd. 10, p. 232.

If any tribunal was charged with the duty of making such determination of the aggregate cash value of the general properties of the state, it was the State Board of Equalization itself. As shown later, that Board attempted no such determination.

**The Tax Commission's estimate was based on the field men's reports.** The report was a mere estimate. That it was based largely if not entirely upon the reports of the field men appears without dispute. Commissioner McLaughlin says: "In the report to the State Board of Equalization we followed the report of the field men in nearly all cases." (R. p. 100.)

Secretary Twiss says: "The Commission tabulated the information obtained by this field examination in 1901. Exhibit F attached to the Bill of Complaint (including pages 295 to 332 of the Transcript of Record) contains the information by those examiners in 1901." (R. p. 61.)

This report to the Board of Equalization was based in large part upon the comparative tables prepared by the registers of deeds and county treasurers just before the 1900 assessment. There had been no additional reports of that nature since 1900. (McLaughlin's Test., R. p. 85.)

Up to this time the Commissioners had not repudiated the 1900 comparative table known as Exhibit A, and were still standing upon the estimates made by the field men. After the meeting of the Board of Equalization in 1901, the experience of the Commissioners was such as to show the unreliability of this comparative table, and the Commission was accordingly compelled to repudiate the valuations contained in it and to



refuse to place any dependence upon it. (McLaughlin's Test., R. pp. 81, 83; Freeman's Test., R. p. 130.)

The Commissioners' 1901 estimate was therefore of no higher value than the estimates of the field men just discussed, which have been shown to be unreliable and insufficient to overthrow the official assessments.

**The Commission's 1901 estimate was incompetent and immaterial.** In making this estimate for the State Board of Equalization it is necessarily admitted by the Commissioners that they acted almost entirely upon hearsay. Even in the comparatively few cases where reviews were had by the Commissioners before the meeting of the Board of Equalization (which was held in August) the Commissioners acted almost entirely upon hearsay, because, as before shown, the Commissioners seldom saw any considerable portion of the property reviewed. The Commissioners admit that they had in making this assessment no means whatever of determining mathematically the value of a county. (Freeman's Test., R. pp. 134, 141.)

It is naturally admitted that no accurate estimate was possible without a complete examination of all the parcels assessed. (Gullifer's Test., R. 117.)

This 1901 estimate was accordingly objected to as incompetent and immaterial. (R. pp. 281, 61, 113, 114.)

We submit it was clearly subject to those objections.

**b. This estimate has since been expressly discredited by the Commissioners.**

It aggregated 1702 million dollars. In this estimate were included some figures which did not represent even the recommendations of the Commissioners.

"We were represented as recommending 180 millions for Houghton—which we did not recommend—and in one or two other counties figures were put in to make up that 1702 mil-

lions which were not our figures, but were above our opinion of values." (McLaughlin's Test., R. p. 102.)

Not only was there frequently a variation of as much as 15 per cent. in the estimates made by the individual assessors (which is practically as great as the difference between the estimated and assessed valuation of the general properties of the state—Dust's Test., R. p. 77), but the experience of the Commissioners since that time has compelled them to admit that in the 1901 estimate they over-valued property in a great many instances. (Freeman's Test., R. p. 142; Twiss' Test., R. p. 67.)

**The 1902 reviews completely discredited the 1901 estimate.**

In 1902 the Tax Commissioners made a considerable number of reviews. The result of these reviews was that in **nine counties alone** reviewed by the Commissioners the values of real estate adopted by them upon such reviews were nearly  $44\frac{1}{2}$  **millions less** than the estimates made by those Commissioners for the very same counties included in the 1901 estimate to the Board of Equalization. (See Testimony of Commissioner Dust, R. p. 80, where the figures in detail are given.) (These counties are Bay, Saginaw, Jackson, St. Clair, Macomb, Kalamazoo, Kent, Washtenaw and Manistee.)

The result of this 1902 review in the nine counties named is admitted even by Commissioner Freeman to seriously discredit the 1901 estimate and that the discrepancies in some of the counties are serious. (R. pp. 130, 131.)

It is interesting to note, as a mathematical computation, that the 1902 experience of the Commission in the nine counties referred to, if the same throughout the state, would show that the **actual value** of the real property of the state in 1901 was but 84.6 per cent. of the amount of the Commissioners' 1901 estimate as reported to the State Board of Equalization. (Dust's Test., R. p. 80.)

A proportionate ratio of the Tax Commission's 1902 esti-

mate would produce substantially the official assessment for that year.

We submit that the 1901 report of the Tax Commission is shown to be completely discredited.

**(3.) The equalized valuations adopted by the State Board of Equalization in 1901 have no tendency to show an aggregate under-assessment of the general properties of the state in 1902.**

For the purpose of obtaining as high an estimate as possible by the Board of Equalization of the value of the general properties of the state, the Tax Commissioners entered upon an active campaign both during and previous to the meetings of the Board of Equalization, taking up the subject of the duty of that Board several weeks before the latter met, through correspondence with the Secretary of the Board and with the Attorney General, the Commissioners taking the position that it was the duty of the Board of Equalization not simply to determine the relative valuations of the respective counties as between themselves, but the absolute values. (R. pp. 281-295.)

Having obtained advice from the Attorney General in accordance with their view, the Commissioners attended and addressed the meeting of the Board of Equalization, presented to that Board their estimates of the values of the general properties of the state, and took an active part in the discussions before the Board. (R. p. 288.)

Protests were made before the Board by representatives of various counties, upon the ground that the reports of sales upon which the Commissioners' deductions were based, were valueless or misleading, and that in many instances the estimates of values made by the Commissioners were grossly extravagant. (R. p. 288.)

The opposing view was also urged upon the State Board of Equalization—that its duty was not to determine actual

values of taxable property, but only to equalize the assessments relatively as between themselves.

See Auditor General's letter, R. p. 287.

Judge Blair's opinion, R. pp. 281, 282.

The State Board of Equalization so equalized the values of the assessed property as between the various counties as that the aggregate of such equalized assessments was \$1,578,100,000. The Tax Commissioners' estimate, presented to the Board of Equalization, was \$1,702,471,014.

(a.) **The State Board's equalization was not an adjudication of actual values.** Whether it was the duty of the State Board of Equalization to determine actual values of the general property of the state, and what would have been the effect of such a determination, is immaterial to this inquiry. The Board of Equalization expressly limited its findings to **relative** valuations of the property of the various counties without committing itself to a judgment as to the **actual** values. This clearly appears from the record, thus: The determination of the necessity of equalization is in the following language:

"Whereas, this Board has examined the statements of the assessments for 1901 and of the equalization made by the boards of supervisors \* \* \* and has also heard the representatives of the several boards of supervisors, and examined the statistics prepared by the State Board of Tax Commissioners which tend to show the character and value of the property in the several counties; and

Whereas, from such examination and hearings this Board finds that the relative value between the several counties as assessed for the year 1901 and equalized by the boards of supervisors as aforesaid, is not **equal and uniform**, according to location, soil, improvements, production and manufactures, but that

such assessment and valuation are **relatively unequal** as between the several counties; and

Whereas, the Board finds further from its examination of said reports and statistics that the personal estate of the several counties has not been **uniformly estimated**, therefore

Resolved, That this Board equalize such assessments as provided in Section 132 of the Compiled Laws." (R. p. 486.)

The language of the resolution of equalization is as follows:

"Resolved, That the assessment of the several counties in the state of Michigan be and it is hereby **equalized** as follows:" (R. p. 486.)

The table of equalization contains the following column headings: "Valuation as equalized by boards of supervisors in 1901; Amount added by State Board of Equalization in 1901; Amount deducted by State Board of Equalization in 1901; Aggregate of valuation as equalized by State Board of Equalization in 1901." (R. p. 487.)

The action of the Board providing for preparation of a table showing such equalized values as compared with assessed values is in the following language:

"On motion of Mr. McCoy, the Secretary was instructed to prepare a table, showing by counties the **valuation** according to the estimates of the Tax Commission, the assessed valuation by county boards of supervisors, the **equalization** by the State Board of Equalization in 1901, the **equalization** by the State Board of Equalization in 1896, and the percentage of the entire valuation **borne by each county** according to the last two equalizations." (R. p. 488.)

It is expressly conceded that the State Board of Equalization in 1896 did not attempt to determine actual values.

But the record is express, by the admission of appellant, that "Nowhere in the report of the proceedings of the Board of Equalization is there **any statement** of the basis of the Board's valuation; that is to say, whether or not it attempted to determine actual values." (R. p. 288.)

The action of the State Board of Equalization is thus clearly not an adjudication of actual values.

(b.) **The report of the State Board of Equalization was not competent evidence to prove under-valuation.** This proposition follows from what has been already said. This report was objected to when offered, as incompetent, irrelevant and immaterial (R. p. 281), and motion was later made to strike it out. (R. p. 489.)

Had the State Board of Equalization regarded the equalized valuation of 1578 millions as the actual value of the general taxable property of the state, such opinion would have the effect only to seriously discredit the Tax Commission's estimate of 1702 millions presented to the Board of Equalization. It would doubtless have been even more seriously discredited could the experience of the Tax Commissioners in the 1902 reviews have been anticipated.

(4.) **The estimate made by the State Board of Assessors of the value of the general properties of the state in 1902 does not prove an under-valuation of those properties in the year in question.** This estimate was not a legal adjudication of actual values. It was without substantial basis and was largely pure guess. Its basis, so far as it had any, was for the most part the same 1901 discredited estimate of the field men. It even failed to represent the actual opinions of the individual members of the Commission at the time it was made.

(a.) **The 1902 estimate was not a legal adjudication of actual values.** The assessment rolls of general property, after being completed by the assessing officers, are submitted to local boards of review, and are then subject to review by the

State Tax Commissioners, who can change values, add omitted property, or even make new rolls if desired.

The law provides that when the Tax Commissioners do not intervene, the assessed valuations as reviewed by the local boards of review, are final, and that when the Tax Commissioners do intervene, their action upon the rolls themselves becomes final.

P. A. Mich. 1899, Sec. 152, pp. 232, 233.

Tax Com'nrs vs. Quinn, 125 Mich. 128.

The assessment rolls **as finally reviewed**, for 1902, aggregated (in round numbers) 1418 millions. The average rate of taxation paid throughout the state upon property generally was thus \$16.55 -|- per each one thousand dollars of assessed value. When the State Board of Assessors (which values railroad property) met at the end of 1902, after the assessment valuations of general property for that year had become absolute, and the taxes spread, Commissioners Freeman and Sayre conceived the notion of decreasing the average rate of taxation to be assessed upon railroad property, by adopting **for the purpose**, and **for that purpose only**, a valuation of the general properties of the state in excess of their assessed valuation as finally reviewed and adjudicated by the assessing and reviewing officers.

A valuation of 1715 millions was adopted **for that purpose**. Commissioner Freeman advocated the same upon the ground that it would be likely to prevent attacks by the railroads upon the 1901 railroad **ad valorem** tax law in question.

McLaughlin's Test., R. p. 103;

Freeman's Test., R. p. 135.

The Michigan Supreme Court held, in proceedings brought directly to review the action of the State Board of Assessors, that the Board had not jurisdiction to make such determination of actual values as against the actual and finally assessed valuations of general property which inflexibly con-



trolled, and that the duties of the State Board of Assessors in determining the average rate were purely mathematical, saying: "We think the clear intent of this (the constitutional) provision is that the rate which is **actually levied** upon property **actually assessed** is the rate contemplated by the language employed."

B'd of Education vs. State B'd of Assessors, 133  
Mich. 116.

It should go without saying that the attempted action of the State Board of Assessors, held by the highest court in the state, in construing its own statutes and constitution, to be without jurisdiction, was not a legal adjudication that the value of the taxable property of the state was in excess of the officially assessed and reviewed valuation.

Nor has the Board of State Tax Commissioners made or attempted such adjudication.

The only way in which the Tax Commissioners could adjudge values is in the manner provided by the statute, namely: by reviews, general or special, of the assessment rolls themselves, or of individual assessments thereon, previous to the spreading of the taxes for the year.

It was because the assessments for 1902 as finally reviewed were final and conclusive, that the Supreme Court of Michigan denied the power of the State Board of Assessors to adopt a new valuation.

The fact that the membership of the Tax Commission and the State Board of Assessors is the same, makes no difference. As Tax Commissioners their power to review the valuations for the year ended when the taxes were finally spread, and as has been said, the only method provided for such review by the Tax Commissioners is by way of reviewing the assessments upon a given roll either in whole or in part. The Tax Commissioners, therefore, **had no power** to again determine the



values of the property of the state until the assessment rolls of 1903 should be under consideration.

But the record is express that the Tax Commissioners have never attempted, regularly or otherwise, to determine the value of the general property of the state for 1902 otherwise than as appears in the rolls, which show the aggregate value to be 1418 millions. It was only the State Board of Assessors which attempted to determine the greater value and whose action the Supreme Court held null.

See Rept. State Board of Assessors, R. p. 347.

(The report of the Tax Commission closes at page 49 of that report, and the extracts from the report of the State Board of Assessors begin with the last paragraph on page 345 of the Transcript of Record. See R. pp. 72-3, 347.)

See also Answer of B'd of Education, R. pp. 28, 30, 26.

Freeman's Test., R. 142-3, 144.

The record is express that the total assessed valuation of the general property of the state, after all reviews thereof had been had, was 1418 millions (round numbers). (R. p. 4.)

Freeman's testimony (R. p. 126) regarding the determination by "our Board," does not refer to the Board of Tax Commissioners, but only to the State Board of Assessors.

Had the Board of State Tax Commissioners made such adjudication of a 1715 millions valuation, the case of Board of Education vs. State Board of Assessors could not have arisen.

**Answer in Board of Education case.** The attempted action of the State Board of Assessors having been without jurisdictional authority, it is idle to say that the answer of the members of that Board in a suit brought to set that action aside, was a legal adjudication of property values. Commissioner McLaughlin distinctly repudiates the answer as overstating his views as to values. (R. pp. 95-7, 104.)

The testimony as to this estimate was objected to by appellee as incompetent, irrelevant and immaterial, and we submit the objection was well taken.

Record, pp. 63, 93, 126.

(b.) **The 1902 estimate was without substantial basis and largely pure guess.** The process by which this 1715 million estimate was reached by the State Board of Assessors is thus stated by Commissioner McLaughlin:

"We took our report to the State Board of Equalization as a basis, and that total was 1702 millions, in which we were represented as recommending 180 millions for Houghton—**which we did not recommend**—and in one or two other counties figures were put in to make up that 1702 millions **which were not our figures** but were above our opinion of values \* \* \* We allowed something for Houghton and other counties of that kind, then compared in a general way the values of counties reported to the State Board of Equalization and the value of those counties as we had determined them by our later and fuller examinations, and found that upon our later and fuller examinations in 1902, in counties where we had made general reviews, **our value did not come up to the figures of these counties in 1901.** \* \* \* We **made a guess** at what the rest of the counties would show by the same kind of work, with the result that we reduced materially that 1702 millions of dollars. Then we **made a guess** as to the amount of personal property in the state that was not assessed, and the two together were somewhere around 1715 millions. I can't tell how much personal property was put in; I objected to the whole plan of doing that; my objection was based on the idea that it was a guess, and that our action would be a guess and indefinite, that our action was controlled by the statute and that we could not use our judgment but were held to the assessed value. When we were trying to find out that amount,

we were guessing too much and hadn't data enough." (R. pp. 102-3.)

Even Commissioners Freeman and Sayre, whose unsuccessful attempt to enforce this estimate seems to have affected their attitude throughout this litigation even to the extent of causing them to make voluntary affidavits in support of the appellant herein—admit that the amount of 1715 millions was not the result of any mathematical process or computation. (R. pp. 132, 133, 151.)

"I did not understand that there was any certainty about the 1715 millions; that was the best estimate that the Board could make, some of the members being above and some below. No certain way that any man could figure out to the others that he was right and the others wrong." (Sayre's Test., *supra*.)

Nor has the Tax Commission by its 1902 report attempted to determine even that a general condition of under-valuation was "well known to exist" in 1902, as implied in some of the questions put to appellant's witnesses, as, for instance, that to Commissioner McLaughlin on page 94. The expression referred to is found only in the 1901 letter of the Commissioners to the State Board of Equalization written previous to the adjourned meeting of the Board. It was a part of the general claim of the Commission of an under-valuation in 1901 based on the six repudiated field examinations of that year. (R. p. 294.) It was never embraced in any report of the Tax Commission, except that in the 1902 report was published the 1901 correspondence with the State Board of Equalization.

No one has attempted to show how the result was reached. Freeman says: "I do not know what the members of the Board made up their figures from to reach that 1715 millions. \* \* \* Did not take 1702 millions as a starter, but it had much to do with my determination. I thought of it and we

spoke of it. \* \* \* I talked of the work and the data that came out of the matter that appears in this Exhibit A, and that entered into my calculations to some extent in settling the matter in my mind that the property of the state was not assessed at value." (R. p. 132.)

As already stated, Exhibit A was later absolutely repudiated by the Commissioners as too unreliable for use.

Both Commissioners Dust and McLaughlin expressly say that the estimated amount included a **substantial sum** by way of pure guess. (R. pp. 92-3, 102-3, 77.)

Even this guess involved differences of opinion among the Commissioners at least as great as 15 per cent., which is practically the amount of the claimed under-assessment.

Dust's Test., R. p. 77.

McLaughlin's Test., R. p. 99.

Commissioners Dust and McLaughlin expressly testify that at the time of making the 1902 State Board of Assessors' estimate they regarded it as too high. Mr. McLaughlin states that he expressly disapproved of the amount. (R. pp. 93, 98, 99, 102.)

While the answer in the Board of Education case attempted to justify this extravagant estimate, Commissioner McLaughlin says that this answer did not meet his approval and gave a wrong impression, that it stated the case entirely too strongly and that he signed it merely to try and sustain the action of the Board, although it had been had against his judgment. (R. pp. 95, 96.)

Commissioner Dust says that he at the time regarded the assessment by the supervisors as averaging certainly more than 90 per cent. of cash value. (R. pp. 76, 78.)

The nine prominent counties reviewed by the Commissioners after the 1901 equalization, brought, as before stated, but 84.6 per cent of the Commission's estimate on the same counties made to the State Board of Equalization. **A like per-**

centage of the 1715 million estimate of 1902 would have been but 1450 millions as against an actual assessment of 1418 millions, or but about 2 per cent. above the actual assessment.

The 1902 estimate of 1715 millions was based upon the 1901 field examinations and the 1901 estimate to the State Board of Equalization.

This fact is expressly stated by Commissioner McLaughlin as before quoted (R. pp. 102-3) and is in no way disputed, except in an indefinite manner by Commissioner Freeman. (R. p. 132.)

Without refining on definitions, it is plain that the 1902 estimate was largely based on the 1901 field men's estimate and the discredited field men's examinations. For the most part the Commissioners had no other basis—except so far as they guessed—for in 1902 field examinations were had in but 16 counties out of the total of 84 in the state, and reviews were had by the Commissioners in only the 16 counties, as against 30 reviews had in 1901; while of the 16 "examined" but four counties were entirely reviewed in 1902, namely: Macomb, Bay, Kalamazoo and Jackson. (R. pp. 87, 125, 149.)

While some of the results of the 1902 examinations may have been taken into account, the extent to which those examinations were considered is not shown, and no one claims that the 44½ millions discrepancy between the Commissioners' 1901 estimate in nine counties alone, and the Commissioners' 1902 reviewed values, was taken into account. There is no evidence that the results of the 1902 reviews were ever tabulated. Indeed, neither Commissioners Dust nor Freeman, to whose attention the discrepancies referred to were called on their examinations as witnesses, seems to have been familiar with that result. (R. pp. 80, 130.) But aside from this consideration, the fact remains that no one has been able to even suggest how the 1902 estimate was arrived at (apart from the element of guess) unless by reliance almost entirely

upon the discredited 1901 estimate. And, although the testimony in this case was taken in 1904, when the Commission had had two years more for examination and reviews, there is nothing in the record to indicate that the remaining counties in the state (aside from those reviewed in 1902 with the results mentioned) did not prove to have been as greatly over-estimated in 1901. On the other hand, the fact that the reviewed assessment rolls of 1903 aggregated but 8 per cent. above the assessments for 1902 in question, tend strongly to prove such general over-estimate in 1901 (and thus in 1902), for both Commissioners Dust and Gullifer admit without dispute that the increase in assessment for 1903 does not indicate a corresponding under-assessment in 1902, for the reason that substantially all, if not all, of that 8 per cent. increase can be accounted for by actual increase in intrinsic values of the property assessed from 1902 to 1903—that period being, as is well known, one of unusual increases in values throughout the entire country. (R. pp. 76-7, 120.)

See, also, Freeman's Test., R. p. 142.

In the same connection it is interesting to note that the aggregate reviewed assessments of general property for 1904 were a trifle less than for 1903.

See 1904 Report of State Tax Com'rs. Tables 9 and 10.

Unless, therefore, the field examinations of 1902 show a system of under-valuation then existing, the 1902 estimate must rest entirely upon the discredited estimate of 1901.

(c.) **The field examinations of 1902 show no system of under-valuation then existing.** For the purpose of showing a practice of under-assessment continuing in 1902, appellant introduced some testimony of field examinations had in that year. The results of those examinations lend no corroboration whatever to the claim of under-valuation in the 1902 assessments as reviewed. During the year 1901, 32 men were

employed by the Tax Commissioners in making the field examinations throughout the state on whose work the 1901 estimate had been made. When the testimony in this case was taken (in 1904) 13 of these men were still in the employ of the Commission, in addition to 21 men who had been employed previous to the fixing of the rate in 1902. Of this entire number but five were produced as witnesses regarding field examinations and estimates.

It is significant that the evidence of under-assessment by supervisors in 1902 is confined to seven counties out of the 16 actually examined and reviewed that year by the Tax Commissioners, namely, the counties of Clinton, Oakland, Calhoun, Delta, Montcalm, Shiawassee and Menominee. These 1902 estimates of field men are discredited both generally and specifically—

First. By the general discredit given to the 1901 examinations as before discussed in this brief. The 1902 examiners had all taken part in the discredited 1901 examination, and there is nothing in the record to show that the examinations in the latter year were substantially more careful than in the former.

Second. The few townships in Oakland and Calhoun counties (2 in Oakland and 12 in Calhoun) testified by Bibbins as examined by him in 1902, were estimated by him as assessed at but 87.6 per cent. and 79 per cent. respectively of cash value, yet he admits that the **entire of Calhoun County** averaged in his judgment 90.6 per cent. of the sale prices in 1902. (R. pp. 154-5, 158.)

And it is admitted by examiner Bolt (and without substantial dispute) that so radical was the tendency of the field examiners to make extravagant estimates of values, that an assessment by a supervisor at 10 per cent. or even 15 per cent. less than the estimates of the field examiners would properly be regarded as true cash value.

"Q. So when you find a township that is up to, say, 90 per cent. of its true cash value, in your judgment, you recommend to the Commission that there is no immediate necessity for action in that township? A. Yes, sir; that is my manner, and I believe the Commission feel that way too." (R. p. 194.)

"And when I find, as I did in one of those townships (Shiawassee County) that the property was assessed at approximately 50 per cent. of what I thought was its value, I would say that the property was substantially assessed at its cash value." (R. p. 199.)

Third. The estimates of fieldman Stone as to Calhoun and Oakland Counties are likewise completely discredited by the fact that although he worked during 1902 in the counties of Kalamazoo, Macomb, St. Clair, Jackson, Calhoun, Oakland, Ionia, Lapeer, Livingston, Cheboygan and Eaton, he picks out only Calhoun and Oakland as containing any townships under-valued, and Calhoun County entire was substantially valued at cash. His examination of the first four counties in the list above given are not produced, but they are four of the nine counties whose 1901 estimates were found so grossly extravagant. For anything appearing in this record, the 1902 estimates of the field men were equally extravagant.

Fourth. Davidson's estimates of part of Clinton County are discredited by the fact that his estimates of Port Huron (which seem to have been made in the same way as those of Clinton County) were admitted by him to have been found too extravagant for later acceptance by the Commissioners.

"The examination carried on in Port Huron was similar to that in Clinton County except that we did not examine every piece in Clinton County. Where we made examination of every piece in the City of Port Huron, the Board concluded my valuations were too high." (R. p. 224.)

Davidson's 1902 examinations are further discredited by



the fact that he took part in the Menominee examinations of that year, which proved too unreliable for use. (R. p. 220.)

**Fifth. The Tax Commissioners have expressly disapproved the field men's estimates of 1902.** The field men's estimates of Menominee County for 1902 were expressly found by the Commissioners to be unreliable. (McLaughlin's Test., R. p. 106.)

Macomb is one of the counties in which a general review was had in 1902, and is one of the nine whose assessments for that year as reviewed by the Tax Commissioners aggregated 44½ millions less than the 1901 estimates. The field men's valuations of Macomb County for 1902 are not shown, nor are those of Lapeer, Livingston, Cheboygan or Eaton Counties. In each of the counties examined by field men (aside from the four in which general reviews of the entire county were had) special reviews were had by the Tax Commissioners covering such portions as seemed to need reviewing, namely, those worst assessed, and the assessments of all these counties as reviewed by the Tax Commissioners were included in the 1418 millions aggregate official valuations for 1902 as assessed and reviewed. The 1902 examinations have thus no effect except to emphasize the glaring exaggerations of the field men's estimates for 1902 as well as for 1901; for the 1902 reviewed valuations of all the counties so reviewed were not only but slightly in excess of the assessed valuations of 1901 (and in Delta and Menominee counties, below), but were in all cases greatly below the estimates made by the field men, as shown by the following comparative table:

	Ass'd Val'n	Ass'd and Reviewed Val'n	Reference to page of Trans. showing field exam. percentages 1902.
	1901.	1902.	
Montcalm ....	8,370,962	8,520,797	189, 192
Clinton .....	16,308,920	16,801,613	91, 222
Oakland .....	29,566,275	32,002,383	155, 216
Calhoun .....	30,268,528	32,088,179	91, 154, 215
Shiawassee ...	17,107,611	17,340,907	90, 192
Menominee ...	9,692,386	9,305,744	92
Delta .....	7,526,035	7,376,508	161

(See comparative tables on pages 355 and 356 of the Record.)

The fact that in 1901 one or more (and sometimes several) assessing districts were found in each of **32 counties** of the state in which, even according to the radical ideas of field examiners, property was being assessed at 50 per cent. (and sometimes at a much higher percentage) of its value (50 per cent. of a field man's estimate being regarded by the Commissioners as the equivalent of cash value) and that in each of **eig. counties** one or more assessment districts were found by the examiners to be assessed at or above 100 per cent. of cash value, not only emphasizes the great advance in property valuations made since 1899, but disproves the existence of any general system of under-valuation even in 1901.

**Note.**—The counties containing districts assessed at 90 per cent or higher are the following: Alger (R. p. 297), Allegan (R. p. 297), Alpena (R. p. 298), Antrim (R. p. 298), Arenac (R. p. 298), Bay (R. p. 299), Benzie (R. pp. 299, 300), Charlevoix (R. p. 302), Eaton (R. p. 303), Emmet (R. p. 306), Genesee (R. p. 306), Huron (R. p. 301), Ionia (R. p. 311), Iosco (R. p. 311), Isabella (R. p. 312), Jackson (R. p. 312), Lake (R. p. 314), Lapeer (R. p. 315), Livingston (R. p. 316), Mackinaw (R. p. 317), Manistee (R. p. 318), Mason (R. p. 318), Monroe (R. p. 320), Muskegon (R. p. 321), Newaygo (R. p. 322), Oceana (R. p. 323), Ottawa (R. p. 325), Presque Isle (R. p. 325), Shiawassee (R. p. 327), Tuscola (R. p. 329), Washtenaw (R. pp. 330-1), St. Clair (R. p. 219).

The Counties containing districts assessed at 100 per cent. or higher are the following: Chippewa (R. p. 303), Delta (R. p. 305), Iosco (R. p. 311), Lake (R. p. 413), Mackinaw (R. p. 317), Presque Isle (R. p. 325), Wayne (R. p. 331), Wexford (R. p. 332.)

b. The evidence of under-valuation is thus confined to the opinions of Tax Commissioners and field examiners.

c. We submit that this evidence is clearly shown to be incompetent for lack of sufficient basis therefor.

No testimony of assessing or reviewing officers impugning the correctness of the official assessments having been introduced, the defendant was not called upon to present testimony of such officers in confirmation of their official acts, and to sustain their official valuations.

**To sum up the situation:** The 1901 estimated valuations are completely discredited. No other basis exists for the 1902 estimate except the 1902 field examinations. Not only are these 1902 field examinations discredited, but the reviews of the territory so examined are included in the 1902 official assessments. The assessments and reviewed valuations for the two following years confirm the substantial correctness of the 1902 assessments. It is impossible that a general system of substantial under-valuation could have continued for several years under the supervision exercised by the Tax Commissioners without fraudulent participation on their part. Such participation is not so much as suggested. There is thus nothing reasonably tending to overthrow the presumption of correctness which attends the official assessments of the supervisors. It follows that the assessments made by the assessing officers in 1902 represented the cash value of the general properties of the state as nearly as it is practicable to obtain it and that the claim of substantial under-valuation of the general properties of the state in 1902 is unsustained by proof.

SECOND.

Even should an aggregate under-valuation of the general properties of the state be found to have existed in 1902, such under-valuation was not fraudulent or intentional, nor was it the result of a concerted rule of conduct.

It has never been claimed by either field men or commissioners that there was any evidence of fraudulent under-assessing at any time except as some of the assessors are claimed to have under-assessed for the purpose of "keeping even" with the other assessors, and thus preventing unfair discrimination against their own districts. (Dust's Test., p. 76.)

Passing by the question whether a practice of that nature would amount to a fraudulent under-assessment, it is clear from the record that whatever may have been the situation in 1899 and the year or two following, by the year 1902 at least all evidence of intentional under-valuation even of the nature above referred to, had disappeared.

This would naturally be expected from what has appeared of the general history of the movement for uniform taxation, and the actual results of the work of the Tax Commissioners as shown in the substantial increase in assessments from year to year.

But the testimony of the Commissioners and field men themselves is a complete exoneration of the assessors from the charge of intentional under-valuation in 1902.

**Character, intelligence and standing of assessors.** The testimony of both Commissioners and field men is, without exception, an endorsement of the character, intelligence and standing of the supervisors generally throughout the state. For instance, Dust and Bibbins say that as a rule the supervisors were honest and conscientious. (R. pp. 74, 156.)

Rolph and Stone put themselves on record with the assertion that the supervisors as a rule were honest men, of good

judgment, and that they tried to make fair assessments. (R. pp. 165, 167, 217.)

Davidson says that the supervisors were thoroughly competent and fit to assess property. (R. pp. 223, 224.)

**Admissions of intentional under-valuation were few, and are confined to earlier years.** Testimony of such admissions was objected to on the part of appellee as hearsay, incompetent and immaterial. (R. pp. 70, 72, 73, 83, 109, 125, 146.)

We submit that these objections were well taken.

Commissioner Freeman, who has been a member of the Commission from the start, and who is not only the most radical of all, but evidently is largely influenced by his early experiences in 1899, while attempting to express an opinion of intentional under-valuation in the earlier years, does not attempt to state the existence of such a condition in 1902. His radical attitude permits him to say that in the earlier reviews he thinks he heard 500 different assessors admit that they had under-valued property. (R. p. 126.)

Not only is he the only person who makes any statement of any substantial number whatever, but this statement on his part is shown to have been recklessly extravagant. He is unable to recall but **one occasion** on which an admission of that nature was made, and cannot recall **any person whatever** who made such admission. (R. p. 135.)

It is conceded that if such admissions were made in the course of reviews or meetings with boards of supervisors, the official stenographer who reported the proceedings ought to have a report of it. (Sayre's Test., R. pp. 147, 151.)

**Note.**—(The quotation on page 146 of the Transcript of record regarding admissions of under-assessments does not refer to admissions by assessing officers. The quotation refers to the arguments of representatives of counties before the State Board of Equalization in 1901. See 1902 Tax Com. Report, p. 36.)

The stenographer of the Commission who reported the proceedings of all the meetings, says that a careful examination of his records shows but two instances where such admissions were ever made in his hearing (R. p. 471) although he reported at least 100 reviews. He adds that even in the two instances mentioned **there was no admission that the under-valuation was wilful.** (R. p. 472.)

So far as later years are concerned, the most definite statement that can be obtained from Commissioner Freeman is that some admitted actual under-assessment in the spring of 1901, but does not attempt to say that even then there was any considerable number of such admissions. (R. pp. 109, 110, 111, 123.)

**Even Freeman does not assert that there were any admissions whatever of under-valuation, intentional or otherwise, in 1902, except as might be implied in the following item:**

He was asked whether, in the opinion of the Board **at the opening of the year 1902**, the under-valuation was intentional. This question was objected to as incompetent, immaterial and irrelevant (R. 122), and we submit, is so objectionable. The question not only relates to assessments before 1902, but the answer disavows even a belief in a general intentional under-valuation, and relates, moreover, to the judgment of others than himself.

"A. Some of it was intentional, I haven't any doubt, and some of it was ignorance, carelessness, and some of it I believe the assessors thought they were assessing at value, and some were so near to value that there might be differences of judgment about it—all kinds of belief, varying with different conditions in the assessing officers over the state." (R. p. 123.)

Sayre's version is that during his **entire work as Tax Commissioner** he had heard about 80 supervisors admit an under-valuation **in this way:** (R. p. 150.)

"There would have to be an explanation as to that. If

you take the ordinary supervisor and ask him if he is assessing at cash value, he will answer yes at once; if, then, you take the sales and go over them and the data we have collected with him, why he will admit he is not assessing at cash value **as we understand it**, and that is true in I should say three-fourths of the cases that I have talked with the supervisors." (R. p. 146.)

Not only does this fall far short of testimony of **intentional** under-valuations, but it does not appear that any experiences of that kind occurred as late as 1902.

The most that Commissioner McLaughlin will say is that some supervisors admitted that "it **had been** their custom to assess property in their districts" at something less than 100 per cent. of its real cash value (R. p. 83) and adds that such admissions were few—"a small proportion of the whole." (R. p. 104.)

The most that Commissioner Dust can say on the subject is that he "cannot remember specific instances where supervisors admitted that they were assessing at less than true cash value and could not mention any particular supervisor," and that admissions of this character have been rare. (R. pp. 73, 75.)

Secretary Twiss, who was with the Commission from the beginning, is express in his statement that he never **heard any** admissions of under-assessment on the part of assessors. (R. p. 68.)

The fact that no complaints were made of violations of the law on the part of assessing officers after 1900, is convincing evidence that there were few, if any, admissions of violations of law after that time.

**The field men heard no admissions of intentional under-valuation.** The field men were always expected to consult with the assessing officer in connection with their own valuation of the property, although they did not usually do so until after

their own estimates were made. The object of this was to confront the supervisor with the field men's estimate and **find out the reason of the discrepancy**. This would be the natural occasion for admissions of under-assessment, if such were the fact. Yet not a field man testifies to any admission of that nature except that Stone once said on his direct examination, that supervisors sometimes admitted, after being shown the field men's estimate, that their own assessments were not at true cash value. Even such admissions did not include intentional under-assessment; but Stone afterwards retracted the statement, and said that the supervisors always claimed to assess at cash value.

"They would say that they were assessing all alike, the poor and the good all the same, and that at cash value. That they were following the law as they saw it." (R. p. 219.)

Bibbins says he never heard from a supervisor an admission of under-assessment. He says that when his own estimates were higher than the supervisors' assessments, the latter always insisted that his estimates were above cash value. He says: "I met most of the supervisors of the townships where I did my work. They were men that fairly represented their people. In a general way I should say that I did not meet any of these men who I think were **intentionally** dishonest in their work, meaning that they were **intentionally** misrepresenting values." (R. p. 156.)

Rolph says that when a sale price was shown greater than the assessed valuation, the supervisors insisted that the property had been sold for more than it was worth. Not only might this readily have been so, especially as most of the parcels sold were of smaller value, but Rolph expressly says that the supervisors may have been right about it. (R. pp. 164-5.)

**No discrimination against railroads.** The record is express and uncontradicted that there was at no time visible



any disposition on the part of the assessors to discriminate against the railroads.

McLaughlin's Test., R. p. 105.

Dust's Test., R. p. 75.

**There was no concert of action.** Not only is there no testimony in the record of any concert of action among assessing officers, but the express testimony of those engaged in the Commission's work is that no such concert existed. Commissioner Sayre testifies that he never even heard of supervisors getting together and agreeing to under-assess, except in one case, and that was a newspaper report merely. (R. pp. 146-7.)

On the other hand, the testimony is express and undisputed on the part of Commissioner Freeman and examiners Bibbins and Stone, that there was no concerted action whatever among the supervisors in the direction named. (R. pp. 142, 159, 219.)

**No uniform under-valuation at any time.** During the early taking of the testimony an attempt was made to show that the under-valuation, so far as it existed, was "uniform."

This was probably for the purpose of showing concerted action. The evidence, however, is a complete denial of this proposition. The testimony of every witness is saturated with admissions that the relations of assessed to actual value, according to the estimates of the various examiners, varied with every case.

See Bolt's Test., R. p. 190.

Gullifer's Test., R. p. 117.

**Commissioners' opinions of intentional under-valuation** were objected to as incompetent. The claim of intentional under-valuation in 1902 is entirely unsupported by proof.

THIRD.

Whatever general property under-valuation may have existed in 1902 was sporadic and not general throughout the state.

The very fact that the assessing officers had generally shown from the start a willingness to obey the law as explained to them by the Commissioners in 1899; that wherever admissions of under-valuation were made the counties were raised to cash value (R. p. 148); that the large additions referred to had been made with respect to specific properties; that the most populous cities and counties of the state had all been brought up to cash value and that the influence of the Commission had extended even beyond the actual visits and reviews held by the Commissioners; the immense raises in assessed values from 1899 to 1902 inclusive, and the fact that in parts only of the six counties are under-assessments, even previous to the 1902 reviews by the Commissioners, attempted to be shown, constitute a complete refutation of the charge of a general under-assessment of property in that year.

The history of the work and results accomplished by the Commission shows that the existence of such a general system of under-valuation was absolutely impossible in 1902.

The appellee moved to strike out the testimony of under-valuation, and we submit that the motion should be granted. (R. p. 281.)

We submit that the charge of general and intentional under-valuation of the general properties of the state for the year in question, has been completely exploded.

**The Adjudicated Cases.**

**1. When relief granted.**

In no case in which relief has been granted on account of under-valuation of other property, do the facts bear any reasonable relation to those in this case.

In **Pelton vs. National Bank**, 101 U. S. 143, which was a suit in equity to restrain the collection of taxes on the capital stock of the bank beyond a certain amount paid by the bank, the **undisputed evidence** showed that national bank shares were assessed from 50 per cent. to 60 per cent. above other moneyed capital, and that "it was a **principle deliberately adopted** to govern their action in the valuation of all the shares of national banks, and was applied to them all without exception."

In **Cummings vs. National Bank**, 101 U. S. 153, the evidence showed that there were four different bodies acting independently in the assessment of as many different classes of property, namely, real estate, personal property generally, banks and railroads. The Court found the facts established as follows:

"The assessors of real property, the assessors of personal property and the auditor of Lucas County \* \* \* **concurred in establishing a rule of valuation**, by which real and personal property, except money, was assessed at one-third of its actual value, and money or invested capital at six-tenths of its value, and that the assessment of the shares of incorporated banks as returned by the state board of equalization for taxation to the auditor of Lucas County was fully equal to the selling price of said shares and to their true value in money."

These facts were established, as stated by the Court:

"by the testimony of four or five district assessors, by the auditor of the county for the year 1876 and for several previous years, who had long been an employee in that office. It was also shown by six witnesses that at one time the auditor of Lucas County held a conference with the auditors of the counties of Fulton, Williams, Defiance, Henry, Pauld-

ing, Ottawa, Wood, Sandusky, Seneca and Van Wirt, and that the **rule by which property was valued in Lucas was the result of this conference** and was to be applied in **all these counties**. The district assessors whose duty it was to make this primary valuation of all personal property (except bank stocks and railroad property) also testified that for the year 1876 they had a meeting and **adopted that rule of valuation** as their guide and so applied it. **All this is contradicted."**

Comment upon the distinctions between that case and this seems unnecessary.

In **First National Bank vs. Lucas County**, 25 Fed. 749, (U. S. Cir. Ct., Nor. Dist. Ohio), the evidence showed that national banks were assessed in accordance with their returns of capital, surplus, etc., and that **other property was assessed at six-tenths of its value by common agreement**. The board of equalization equalized each class separately. The Court said:

"But there was a '**system**' in it beyond that, if anything more be needed. There is conflict in the proof as to the fact whether the assessment at six-tenths was the result of formal action by the taxing officials, but none that **there was a general understanding to that effect.**"

Here, likewise, the differences are obvious.

In **Taylor vs. L. & N. Railway Co.**, 31 C. C. A. (6th Cir.) 537, the facts were found to be that property generally was **assessed systematically at 75 per cent.** and that real estate was **intentionally and deliberately equalized at 75 per cent.**, which had been **adopted** by the board of equalizers as a **rule of action**; that the property of the railroad had been assessed at 100 per cent. The testimony of 150 witnesses covering 35 counties, many of them county assessors, and the testimony of the board

of equalizers as to the existence of the custom is said by the court to leave not the slightest doubt that the custom was systematic, uniform, and well understood. There was no evidence to contradict this.

Complainant has attempted to bring its case within the case just cited, but a comparison of the facts of this case with those presented in the Taylor case show how utterly they have failed to do so. In the Taylor case not only was the evidence of systematic conduct and the adoption of a deliberate rule of under-valuation clear and uncontradicted, but there is another important, distinguishing fact. In the Taylor case one and the same board assessed both classes of property and this board in assessing railroads was guilty of express and intentional fraudulent under-valuation; while in this case the members of the State Board of Assessors which valued the railroad properties, were, as tax commissioners, clothed with the final power of passing upon every assessment of the general properties of the state, and of not only reviewing and revising the same, but even of making new and original assessments with reference to every item thereof. There is no suggestion that the tax commissioners acted fraudulently in permitting an under-valuation of the general properties of the state. On the contrary, the existence of a system of under-valuation by concert between assessing officers, without the co-operation of the tax commissioners, is absolutely impossible under the powers given to, and exercised by the Commissioners.

The fact that the Michigan Tax Commissioners not only possess the complete powers of supervision before referred to over all tax assessments, being the final arbiters and board of review thereon, but have even original authority not merely to increase assessments and to add property to the assessment rolls, but to make out entirely new assessment rolls, places the Michigan Tax Commissioners and the Michigan system of

taxation in a class by themselves. Under this system the assessments finally adopted throughout the state bear no relation to those in question in the adjudicated cases where fraudulent under-valuation was shown or alleged. No such thing as a general practice of under-valuation throughout the state or any considerable portion of it can continue without the concurrence of the Tax Commissioners—much less a fraudulent concert of action among assessors.

In **Chicago Union Traction Co. vs. Board of Equalization**, 114 Fed. 557 (U. S. Cir. Ct.), the testimony showed that the State Board had **deliberately taken a standard** of 70 per cent. to equalize all property by. These, and other things, convinced the court that the action of the Board was not its own and was fraudulent as far as complainants were concerned.

In **Walsh vs. King**, 74 Mich. 350, a **corrupt agreement** between assessors and vessel owners was proven, by which the property of the latter was assessed at **one-tenth of its value**.

In **Solomon vs. Oscoda**, 77 Mich. 365, and **Auditor General vs. Prescott**, 94 Mich. 150, an intentional and purposeful omission of a large and valuable class of property from the assessment rolls was clearly shown.

In **Bureau County vs. Railroad Co.**, 44 Ill. 229, defense was made to an action for the collection of a tax, that property in general was valued at one-fifth to one-third, and that of the railroad much higher. The Court said:

"The rule adopted by the assessors has grown into a custom and has been tacitly sanctioned by every department of the government for a long course of years, and it is now too late to challenge it. \* \* \* It is an **admitted fact** on both sides of the controversy that the property of **no owner** in the County of Bureau has been **taxed on its real value**."

In **Railroad Co. vs. Commissioners**, 54 Kas. 781, the state board, which alone had jurisdiction of railroad property, as-

essed it at its cash value. The county assessors at a meeting agreed to assess all property at 25 per cent.

In *Randall vs. Bridgeport*, 63 Conn. 321, the testimony showed a uniform rule of assessment of real estate at 50 per cent. while that of appellant was at its full cash value.

In *ex parte Bridge Co.*, 62 Ark. 461, the testimony showed that property was assessed generally at a uniform rate of 50 per cent. while the property of the Bridge Company was assessed at its full value.

2. Cases where relief was denied.

On the other hand, in numerous cases where the evidence of unjust discrimination was much greater than here, relief has been denied.

*Bank vs. Miller*, 19 Fed 372.

*Louisville Trust Co. vs. Stone*, 107 Fed. 305.

*Keokuk Bridge Co. vs. Illinois*, 161 Ill. 514.

*Alexander vs. Thomas*, 70 Miss. 570.

*Wagoner vs. Loomis*, 37 O. St. 571.

*Louisville R. R. Co. vs. Commonwealth*, 49 S. W. 486.

*State vs. West. Union Tel. Co.*, 165 Mo. 502.

*Coulter vs. Ry. Co.*, 25 Sup. Ct. Rep. 342.

In *Bank vs. Miller* (Cir. Ct. Dist. Ohio), two witnesses testified to a meeting of the state assessors at which the general understanding was reached that real estate should be assessed at two-thirds to three-quarters of its value as really representing its true cash value. This action was denied wholly by some and in part by others. The Court said:

"It is contended for the complainant that this testimony brings the case within the rule of *Pelton vs. National Bank*, 101 U. S. 143, and *Cummings vs. National bank*, 101 U. S. 153. That is not our view. In *Pelton vs. Nat. Bank* it was held that the systematic and intentional valuation of all other moneyed

—7—

capital by the taxing officer far below its full value, while shares of national banks were assessed at their full value, was a violation of the Act of Congress which prescribes the rule by which they were to be taxed by the state. In that case the court found that the valuation of national bank shares was **intentionally higher** than the valuation of other personal property. \* \* \* In *Cummings vs. Nat'l Bank* the Supreme Court found that the assessors of real property, the assessors of personal property, and the auditor of Lucas County, Ohio, **concurred in establishing a rule of valuation** by which real and personal property, except money, was assessed at one-third, and money or invested capital at six-tenths of its actual value, and that the assessments on shares of incorporated banks as returned by the state board of equalization for taxation by the auditor of Lucas County were fully equal to their selling price and to their true value in money. \* \* \* It is true, as shown by the testimony, that although the shares of the complainant were valued for taxation at but 86.7 per cent. of their true value in money, they **were valued higher than other personal property**, but the error or inequality is not shown to arise otherwise than from a mistake in judgment on the part of the assessing officers. It would perhaps be more exact to say that the judgment of the assessors in their official valuation differs from the judgment of witnesses in their unofficial valuation as expressed in their testimony."

It was further distinctly held that discrimination in valuation can afford no relief unless,

"the officers appointed to make assessments combine together and establish a rule or principle of valua-



tion, the necessary result of which is to tax one species of property higher than others and higher than the average rate."

Not only the decision, but the language of the Court, applies with great force to the facts of this case.

In **Louisville Trust Co. vs. Stone**, (Cir. Ct. App. 6th Cir.) it was alleged that there existed a systematic, intentional and illegal under-valuation of other property necessarily effecting an unjust discrimination. The statute of Kentucky authorized the Board to equalize real and personal property at 70 per cent. Complainant alleged that this statute was followed and defendant denied it. It will thus be seen that an obedience to the statute would of itself create a discrimination. Complainant produced the testimony of eight members of local boards of supervisors, twenty-six county clerks, thirty-one sheriffs, twenty-four county judges, one mayor, one magistrate, and one county treasurer: also of certain persons claimed to have appeared before the state board of equalization, also of one member of that board. All this testimony tended to show a valuation generally at not above 70 per cent. Complainant also produced the testimony of a deputy auditor, who undertook to make a comparison between the assessed valuation and the cash value as reported by the clerks of the various county courts for 1895 and 1896. This showed that the assessed value of lands in 114 counties as equalized, was 71.89 per cent. of the sale value. There was also produced a table showing the assessed value of farm lands from 1894 to 1898 inclusive, as equalized, and which showed little variation during the different years. Opposed to this was a large amount of testimony tending to show that the assessments were intended to be made at fair cash value. The Court, speaking through Judge Day, in denying relief and holding that the charge of under-valuation was not sustained by a preponderance of the evidence, said:

"Every presumption is in favor of the propriety of their action. Errors of judgment on their part will not be enjoined. The proof must be clear and convincing that a systematic discrimination is being made against complainant before the Federal Court will interfere by injunction with the assessment of taxes and the collection of revenues of the state."

A mere statement of the case sufficiently shows that the facts in the Stone case were much stronger than in this case. While in this case no assessing officers were sworn on either side, yet, as remarked in *Louisville Trust Co. vs. Stone*, all were in fact sworn to assess property at its fair cash value. They are presumed to have done so.

In *Bridge Co. vs. Illinois*, defendant, who was sued for taxes, defended on the ground that other property was assessed at one-third of its cash value, while its property was assessed above cash value. The Court held that defendant's property was not in fact assessed above cash value, and rejected the defense of under-assessment of other property on the ground that there was no sufficient showing of fraud or conspiracy.

In *Alexander vs. Thomas*, which was an injunction suit to restrain the collection of taxes on bank stock, it was claimed that complainant's stock was assessed at par, while other property was assessed admittedly at two-thirds of its value. It was held that the bank had no right to complain for the reason that no conspiracy was shown.

In *Wagoner vs. Loomis*, complainant had paid the part of the taxes admitted to be due. The assessment complained of was on bank stock valued at par, which was 80 per cent. of its real value. All other property was assessed at 40 per cent. As to the facts the Court said:

"That a gross, if not scandalous inequality exists between the burden of taxation cast upon bank shares

and that imposed upon other property in the county of Seneca, is fully established by the records before us. But whether this inequality results from incapacity or a more reprehensible trait in the character of the agents and officers of the law upon whom are imposed the duties of listing and valuing property for taxation, is not disclosed."

It was held that as there was no showing of conspiracy or combination, or the adoption of a rule of action for the purpose of imposing on some property more than its just share, complainant was not entitled to relief.

In **Louisville R. R. Co. vs. Commonwealth**, which was an action to collect taxes, the defense of under-valuation of other property was made. The statute provided for the assessment of all property generally at 70 per cent. of the transfer value. The railroad franchise was assessed at its fair cash value. It was held that the provision for assessing at 70 per cent. was meant to insure fair cash value and that the railroad had no cause for complaint. The railroad company also objected that some of the officers did not assess up to 70 per cent. The Court held that in the absence of evidence as to fraud or conspiracy, this could not be taken into account.

In **State vs. Western Union Telegraph Co.** (which was an action to recover unpaid taxes), the defense was made that defendant's property was assessed at full value and other property at 35 per cent. or 40 per cent. Defendant introduced the testimony of a member of the state board of equalization that in his judgment property generally throughout the state was assessed at only 35 per cent. or 40 per cent. This was held no defense for the reason that there was no showing of systematic and intentional violation of duty as against the presumption that the assessors did their duty, the Court saying:

"The law contemplates that for purposes of taxation, property shall be assessed at its true cash value

in money, and it also presumes that all officers do their duty. The evidence adduced is not sufficient to overthrow this presumption, nor to establish a combination or unlawful course of conduct."

In **Coulter vs. Railway Company**, complainant claimed that the general property of the state was valued at 80 per cent., while its franchise was assessed at par. The testimony tended to show that it had been a settled practice for years to assess property at 70 per cent. All the surviving members of the board of equalizers from 1893 to 1896 testified that property was equalized during those years at 70 per cent. of its value. The tax in question was for 1902. There was much evidence that the same condition existed during 1897 and 1898. There was no evidence from the board of equalizers relating to the period from 1899 to 1900. The assessment for 1902 was, however, but a trifle more than for 1891, which the Court below found was but 70 per cent. of real value, and there was much other evidence to the effect that property was equalized at 80 per cent. of the sale price, there being no evidence to the contrary except from a small number of assessors and former members of the board of equalization. This Court held, however, that the testimony was not sufficient to justify a conclusion of fraudulent, general property under-valuation, notwithstanding the natural inclination to think such under-valuation probable; that practice before the adoption of the constitution would not raise a presumption as to practice afterwards; that accidental sales in a given year might be a misleading guide to average values, and the decree of the Court below which had granted relief, was reversed.

The evidence of general property under-valuation in the Coulter case was many times stronger than here presented.

We have failed to find that any case has ever been presented to this Court justifying relief against taxation, other

than of national bank shares, on account of general property under-valuation.

We submit that appellant has entirely failed to prove such an under-valuation of general properties in the 1902 assessment as entitles it to complain.

## II.

### UNDER-VALUATION OF APPELLANT'S RAILROAD PROPERTIES.

Appellant's railroad property was substantially under-valued by the State Board of Assessors in the 1902 assessment thereof. This under-valuation was greater than the claimed general property under-valuation.

#### FIRST.

##### THE RULE OF EVIDENCE.

It was competent for the defendant to show that appellant's railroad property was under-assessed by the State Board of Assessors in 1902, without proving that such under-valuation was fraudulent or intentional.

The evidence presented by defendant in support of the proposition that appellant's railroad property was in fact under-valued by the State Board of Assessors in 1902, was objected to by appellant as incompetent and immaterial, and motion has been made, upon the like grounds, to strike out all testimony of such under-valuation, the reason assigned for the objection being that the assessment of the railroad property cannot be reviewed without a showing that the State Board of Assessors in making an under-assessment, acted fraudulently, and that no proof of such fraud has been given.

We submit that for the purposes for which this inquiry is had, the question of railroad under-valuation is not only material, but is absolutely necessary to be determined, and wholly regardless of the question of the good faith or bad faith of the Board of Assessors.

Prejudicial discrimination the basis of right to relief. The basis of appellant's claim to relief is not merely that the general properties of the state are fraudulently under-valued. Proof

of such fact alone would not give the right to relief. To make a case entitling appellant to relief, it must show, **first**, that the general properties of the state were **in fact** under-valued; **second**, that such under-valuation was fraudulent; and, **third**, that such under-valuation has resulted to appellant's prejudice from the fact that its property has been actually assessed at a higher rate than the general properties of the state. It is only the **second** of the three facts necessary to be shown which involves fraud. Unless complainant's properties have been so actually assessed at a higher percentage of value than the general properties of the state, complainant, is not prejudiced; and without such prejudice equitable relief cannot be had, even though the assessment of the general properties of the state is shown to have been fraudulent. This prejudicial discrimination is the basis upon which relief has been asked, and the right to the same considered, in all the adjudicated cases of alleged discrimination.

- Pelton vs. Nat'l Bank, 101 U. S. 143.
- Cummings vs. Nat'l Bank, 101 U. S. 153.
- First Nat'l Bank vs. Lucas County, 25 Fed. 749.
- Taylor vs. L. & N. Ry. Co., 31 C. C. A. 537.
- Chicago Union Traction Co. vs. Board of Equalization, 114 Fed. 557.
- Railway Co. vs. Coulter, 131 Fed. 282.
- Coulter vs. Ry. Co., 25 Sup. Ct. Rep. 342.
- Bureau County vs. Railroad Co., 44 Ill. 229.
- Railroad Co. vs. Commissioners, 54 Kas. 781.
- Randall vs. Bridgeport, 63 Conn. 321.
- Ex parte Bridge Co., 62 Ark. 461.
- Bank vs. Miller, 19 Fed. 372.
- Louisville Trust Co. vs. Stone, 107 Fed. 305.
- Keokuk Bridge Co. vs. Ill., 161 Ill. 514.
- Alexander vs. Thomas, 70 Miss. 517.
- Wagoner vs. Loomis, 37 Ohio St. 571.



Louisville Ry. Co. vs. Commonwealth, 49 S. W. 486.

State vs. West. Union Tel. Co., 165 Mo. 502.

Southern Railway Co. vs. N. Carolina Corp. Com., 104 Fed. 700.

Railroad & Telephone Cos. vs. B'd of Equalizers, 85 Fed. 302.

Thus, in *Louisville Railway Co. vs. Commonwealth*, *Taylor vs. L. & N. Ry. Co.*, *Coulter vs. Railway Co.*, *Railroad Co. vs. Commissioners*, *Randall vs. Bridgeport*, *ex parte Bridge Co.*, *Cummings vs. Nat'l Bank*, *First Nat'l Bank vs. Lucas County*, *State vs. Western Union Tel. Co.*, *Southern Railway Co. vs. North Carolina Corporation Commission*, and *Railroad and Telephone Cos. vs. Board of Equalizers*, the property of the respective complainants was alleged to have been assessed at par, while general property was alleged to have been assessed at below value.

In *Pelton vs. National Bank* the claim was made that the property in question was assessed from 50 per cent. to 60 per cent. above other moneyed capital.

In *Bureau County vs. Railroad Co.* the claim was made that property in general was assessed at one-fifth to one-third its value, and that of the railroad much higher, although not necessarily at 100 per cent.

In *Bank vs. Miller*, real and personal property, except money, was alleged to be assessed at one-third, money and invested capital at six-tenths of its actual value, and complainant's property at 86.7 per cent.

In *Bridge Co. vs. Illinois* it was claimed that while general property was assessed at but one-third of its cash value, complainant's property was above its full value.

In *Wagoner vs. Loomis* the assessment complained of was alleged to be at 80 per cent. of the real value of the property,



while other property was alleged to have been assessed at 40 per cent.

All these cases, as well as all others which we have examined, recognize and assert the doctrine that the property as to which relief is sought, must be shown to have been assessed on some basis higher than that adopted for the property alleged to have been fraudulently under-valued, whether that higher basis be 100 per cent. of value, or a greater or less per cent. than 100.

It is too plain to require argument that unless appellant has been injured in fact it has no standing in this proceeding. Where, the statute requires all assessments to be at cash value and some are below that value, injury and discrimination result as to those assessed above the latter value. If, however, notwithstanding the violation of the statute, both are on the same plane, no injury results. As stated by Mr. Judson:

"It is obviously immaterial what the basis of valuation is if it is uniform as to all property within the territory, or as to the class of subjects upon which the tax is laid. This is recognized in the requirement of state constitutions that taxation shall be uniform upon the same class of subjects within the territorial limits of the authority imposing it. Thus, if all the property in the state were valued on the same basis, it would be immaterial to the individual taxpayer whether he paid 1 per cent. on a valuation of 100 cents, or 2 per cent. on a valuation of 50 cents, or 4 per cent. on a valuation of 25 cents."

Judson on Taxation, Sec. 463, p. 609.

Williams vs. Mears, 61 Mich. 87.

Canfield vs. Bayfield Co., 74 Wis. 60.

The burden of proof of prejudicial discrimination is on complainant. The injury, namely, the prejudicial discrimination, is a part of complainant's case. Every element neces-

sary to constitute it must appear, and must be clearly alleged and proven. The rule is well settled that to entitle a complainant to an injunction restraining the collection of a tax it must appear that its collection would be inequitable or unjust.

*Mercantile Nat'l Bank vs. Hubbard*, 98 Fed. 465, 469.

*Cooley on Taxation* (3rd Ed.) 1443 and cases cited.

It necessarily follows that to entitle appellant to relief it must show not only the failure to assess other property than its own at cash value, but that by reason of the under-assessments, it has been made in fact to pay more than its just share of the tax.

*Cooley on Taxation* (3rd Ed.) 751, 752.

*Muskegon vs. Boyce*, 123 Mich. 540.

*Wagoner vs. Loomis*, 37 Ohio St. 582.

*Moss vs. Cummings*, 44 Mich. 361.

In *Cooley on Taxation* it is said:

"And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. If his assessment is not out of proportion with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little and another too much. This is a rule which has been applied when assessors are found to have systematically under-stated all the property in their district though the statute in most positive terms required an assessment at cash value. The wrong of a disregard of a statute in such a case is a public and not a private wrong."

In *Muskegon vs. Boyce* (supra) it was said:

"It is quite possible that the value placed on the property by the assessing officers was low. It is also

probable that property which ought to have found its way to the assessment roll was not assessed. But that of itself is not sufficient to allow a taxpayer to escape from taxation. It must be made to appear that because of these things he is **made to pay more than his proportion of taxes.** \* \* \* It is not at all clear that defendant ought not to have been assessed more than he was, or that he was not assessed as low proportionately as anyone else."

In **Wagoner vs. Loomis** (supra), which was a case of alleged fraudulent assessment of other property, it was said:

"Equity will not afford relief to a complainant who cannot show that the burden imposed on him is greater than it would have been if the laws had been faithfully executed by taxing all property by a uniform rule and according to its true value in money."

Where, in a suit to recover taxes, defendant's assessments were at one-third off, but at the same ratio to value as the other property on the roll, he was held not entitled to relief.

**State vs. Thayer**, 69 Minn. 170, 174.

**People vs. Van Nostrand**, 24 N. Y. Suppl. 513.

As applied to this case: Should it be established that the general properties of the state were assessed in 1902 at but 82.4 per cent. of their real value, yet unless the railroad properties were assessed at a higher percentage of value than 82.4 per cent. complainants are not entitled to relief on the score of under-valuation.

It would be inequitable and unreasonable to raise, for the purposes of this inquiry, the valuation of the general properties of the state if complainant's property is already valued upon the same basis.

Appellant seeks to meet the force of the fact that the

burden is upon it to show a discrimination to its prejudice by the proposition that the assessments of the railroad companies as made by the State Board of Assessors are presumed to have been at cash value, and that this presumption is conclusive, in the absence of proof of fraud in making the assessments, and that appellant has therefore sustained the burden of proof when it shows the fact of such assessment of its own property. Conceding the existence of the presumption, in the absence of proof to the contrary, that the railroad properties were assessed at cash value, the question of the relation of those assessments to actual value is merely a question of evidence.

The presumption that assessments are equal is manifestly stronger than that they are at cash value, as the dominant idea in the constitutional provisions invoked in complaints of discrimination is uniformity and equality. The entire taxing system of the state is based upon the equality of assessments, and where it appears in any case that part of a class is assessed below value, it is naturally presumed that all assessments were upon the same basis, and therefore that equality and lack of consequent injury existed. This presumption is especially strong under the Michigan system, which confers upon tax commissioners full control over every assessment of general property of the state, and at the same time upon the state board of assessors, whose members are also tax commissioners, sole authority over the assessments of railroad properties. This presumption of equality is of itself sufficient to overcome appellant's proposition.

We concede that the action of the State Board of Assessors so far as it relates to the assessing and fixing of the tax as a judgment against the one assessed, is conclusive in the absence of fraud.

Defendant is not, however, attempting either directly or indirectly, to attack the judgment or amount of the assess-

ment, or to compel appellant to pay more than the tax assessed against it. On the contrary, defendant insists that the assessment made and the judgment entered by the State Board of Assessors against the appellant shall stand, and that appellant shall pay the taxes fixed by it. The appellant, on the other hand, is the one who attacks the assessment made by the State Board of Assessors, and for the purpose of avoiding, in part, the tax assessed against it, assails the state taxing system as applied by that Board and the other assessing officers in the state, and puts in question the issue of the undervaluation of its railroad property by alleging that other property is assessed below value. It thus opens the inquiry into the nature of the assessment of its own property, and submits to the equitable discretion of the Court which it has invoked, the question of whether or not it is being called upon to bear more than its just share of the public burden. This question, therefore, does not rest on presumption of assessment at cash value. The question is, what is the value of complainant's property, and what relation does the assessment placed on it bear to the assessments placed upon other property in the state?

The complainant is in a court of equity, and by its bill it has offered to do what it is required to do as a condition of relief, namely, to pay its just share of the public burden. In none of the cases where a fraudulent under-valuation of other property is made the basis of relief to the complaining party, has the defendant been required to show fraud in the making of the assessment complained of in order to permit an inquiry into that assessment. In fact, the cases recognize the contrary rule. For example:

In **L. & N. Ry. Co. vs. Coulter** (*supra*), the assessing board members testified to a valuation of the railroad property at cash value. The Circuit Court, after reaching a conclusion that the general property of the state was assessed at 80

per cent. of its value, entered into the question of the value of the railroad property, saying:

"But in order that complainant may be entitled to the relief which it seeks, it is not sufficient that such be the fact. It is essential that its property in this state should have been valued by the board of valuation and assessment at its full, fair cash value, in the process of determining the amount at which its intangible property should be assessed. Here complainant and defendant exchange positions. The former contends that said property was so valued, the latter that it was not. This dispute, therefore, demands settlement at our hands." (131 Fed. at p. 303.)

No proposition of fraud in connection with the valuation of the railroad property was involved.

The same principle was recognized by this Court in its consideration of the same case on review.

*Coulter vs. Railway Co.*, 25 Sup. Ct. Rep. 342.

The same principle is impliedly recognized in *Muskegon vs. Boyce*, from which we have quoted above; also in *Railroad and Telephone Cos. vs. B'd of Equalizers*, and *Southern Railway Co. vs. N. Carolina Corporation Commission* (*supra*.)

We know of no case asserting a contrary doctrine. The case of *Lowell vs. County Commissioners*, 3 Allen 549, cited below by appellant's counsel, has no such application. The proposition that an alleged under-valuation of one piece of property of a complainant tax-payer cannot be set off against an over-valuation of another piece belonging to the same tax-payer, has no relation to the proposition here involved.

**How discrimination corrected.** A consideration of the method of relief to which complainant would be entitled upon a finding of a fraudulent under-valuation of the general properties of the state, shows conclusively the correctness of



the proposition that fraud in the making of the railroad assessments is not necessary to be shown.

The assessment against the appellant consists of two features—first, an appraisement of value; and second, the rate of taxation determined mathematically by the commissioners by reference to taxes paid upon other property. The product of these two elements makes the tax or judgment. The ratio of discrimination depends on the ratio of assessed valuation in the one to that in the other class.

Judson on Taxation, Sec. 467, pp. 613, 614.

The equalization in cases of discrimination may be accomplished either by reducing the property of appellant to the same basis of valuation borne by other property, or by changing the rate of taxation made necessary to meet a proved discrimination. Neither of these methods is exclusive. The raising, for the purpose, of the value of appellant's property, does not make a greater judgment than that entered by the State Board of Assessors. It merely fixes a sum not greater than the amount of the judgment collected by the State Board of Assessors, which appellant is required to pay as a condition of receiving equity.

But an adjustment of the valuation of complainant's property means merely an adjustment of the rate of taxation, which is the very thing of which appellant complains.

The average rate of taxation for 1902 as imposed upon railroad property was \$16.55 on each thousand dollars. It is appellant's theory that the general properties of the state were assessed at but 82.4 per cent. of their real value, and that this rate should therefore be but 13.68 per thousand. This is the proposition stated by appellant in its bill. (R. pp. 3-5.)

The valuation of general property is attacked by appellant only as, and because it affects the average rate of taxation assessed upon its property. If, however, complainant's prop-

erty is assessed at but 82.4 per cent. of its value, confessedly it should pay the same average rate of \$16.55 per thousand.

For further illustration—if the general property of the state should be found to be assessed at 90 per cent. of its real value, and the railroad property at 95 per cent. of its value, complainant should pay such percentage of \$16.55 per thousand dollars of valuation as 95 per cent. bears to 90 per cent., namely, about 94 per cent.

The entire question resolves itself into a determination of what proportion (if not the whole) of the average rate of \$16.55 per thousand the appellant is required to pay.

We submit that appellant's objection to the testimony of under-valuation of the railroad properties is not well taken and that fraudulent conduct on the part of the State Board of Assessors is not necessary to be shown in order to entitle defendant to the benefit of actual under-valuation of appellant's railway property.

#### SECOND.

The assessment of appellant's railroad property did not in fact represent the good faith judgment of the State Board of Assessors.

The answer as originally filed denied that the assessment of appellant's railroad property was at its true and actual cash value. Since the testimony was taken the answer was amended by leave of the Court, by adding an averment that the assessment of appellant's railroad property as appearing on the assessment roll, is not at, and does not represent the true cash value of said property, but that such assessment is at an amount much below its true and actual cash value, and that "the said assessment and tax rolls and the said assessment of the property of the said complainant appearing thereon do not express or represent the true and honest judgment of the State Board of Assessors, or the true and honest judgment of its several members; that he believes and charges



the truth to be that the said under-assessment of the property of the said complainant by the said State Board of Assessors is not the result of inadvertence, mistake or accident, but that such under-assessment and under-valuation was intentionally and wilfully made." (R. p. 57.)

A suggestion that because the answer before its amendment contained an admission (R. p. 35) that the assessment of appellant's railroad property on the assessment rolls "was found" by the members of the State Board of Assessors" to be the true cash value of the property of said complainant, and the full and actual value thereof," (coupled with an explicit denial that the assessment was in fact at actual cash value, but without an allegation that the assessors acted in either good faith or bad faith in making the assessment), an **express admission** of the good faith of the assessors resulted, notwithstanding the express statement to the contrary in the amendment, can hardly be taken seriously.

We submit the testimony in the case sustains the allegation that appellant's railroad property was intentionally assessed below the judgment of the members of the State Board of Assessors.

It is not claimed by defendant that railroad properties generally were substantially under-valued in the 1902 assessment, but that the properties of appellant and the Pere Marquette Railroad were so under-valued, is clear. As these two roads were apparently treated together and in the same spirit, it will be necessary, in discussing this one feature, to include the case of the Pere Marquette, although that Road has not appealed to this Court.

An official appraisal of the railroad properties of the state was made under the auspices of the Michigan State Tax Commission as of November, 1900. Prof. M. E. Cooley, Dean of the Department of Engineering of the University of Michigan, and a large staff of civil and mechanical engineers, con-

ducting the physical appraisal, and Prof. H. C. Adams, Professor of Political Economy and Finance at the same institution, and Statistician of the Interstate Commerce Commission, making the non-physical appraisal. This appraisement is known officially as the Michigan Railway Appraisal. (R. pp. 346-7, 489, 500.)

The 1900 appraisements of the Michigan railroad properties, both physical, non-physical, and total, appear on sheet "739a" following page 544 of the Transcript of Record.

When the State Board of Assessors met for the purpose of making the assessments of railway properties for 1902, it had before it the Michigan Railway Appraisal of 1900 referred to, which showed in the case of the Michigan Central, a physical valuation of over 35 millions, and a total valuation (physical and non-physical) of more than 49 millions, and in the case of the Pere Marquette, a physical valuation of 28 millions, and a total valuation of more than 31 millions.

Table "739a" following p. 544 of Record.

Also p. 636 of Record.

The Board had also before it the reports of the railroads showing the largest business and the greatest profits within their history up to that time.

It was thus fair to expect that the values of these roads would be greater than in 1900. Indeed, the railway reports so showed.

Mr. Walker, the engineer of the State Board of Assessors, presented to the Board at this time his computations of the values of the railroad properties of the various roads based upon a critical examination of their reports. He capitalized the net earnings of both these roads at a rate of 5.65 per cent., and after making some deductions, recommended to the State Board of Assessors that the Michigan Central Railroad property in Michigan be assessed at 57 millions (reduced by real

estate locally assessed to \$56,252,000), and that of the Pere Marquette at upwards of 36 millions.

Record pp. 634, 635.

The Board also had before it computations on the Stock and Bond plan (R. 637), and considered several different plans, including capitalization of earnings, and appraisals supplemented by capitalization of final net surplus. (R. p. 639.)

The result of all these computations and considerations was that in advance of the review the State Board of Assessors, after themselves taking part in the making of computations, prepared an "Official preliminary list of values" of railroad properties, and in that appraisal put the valuation of the Michigan Central at 60 millions and that of the Pere Marquette at 38 millions. (R. pp. 637, 638.)

A comparison of the Cooley and Adams, or Michigan Railway Appraisal of 1900, with the State Board's assessments of 1902 shows that the Michigan Central and the Pere Marquette were the only prominent roads in the state whose 1902 State Board assessments were less than those contained in the 1900 Michigan Railway Appraisal.

Table "739a" following p. 544 of Record.

The following comparison of the assessments of the six prominent roads referred to as contained in the 1900 Michigan Railway Appraisal, the 1902 State Board assessment, and the 1903 assessment by the same Board, emphasize the discrimination made in 1902 in favor of the Michigan Central and Pere Marquette and the practical confession of that discrimination contained in the 1903 assessment, which was made after the commencement of this litigation and after the 1902 assessments of the Michigan Central and Pere Marquette roads had been subjected to public scrutiny,—it being the undisputed testimony of engineer Walker that these large increases in the cases of the Michigan Central and Pere Marquette railroads, respectively, are "not accounted for by any

increase in the value of the property between the assessments."  
(R. p. 636.)

Name of Road.	1900 Mich. Ry. Appraisal.	1902 St.B'd Assessment.	1903 St.B'd Assessment.
Ann Arbor System.....	\$ 6,392,388	\$ 7,582,000	\$ 7,600,000
G. R. & I. System.....	10,544,790	11,500,000	12,000,000
Grand Trunk System....	22,157,703	23,195,000	24,081,000
Lake Shore System.....	14,492,977	18,000,000	17,000,000
Michigan Central System	49,633,417	45,000,000	55,400,000
Pere Marquette System..	31,734,584	26,000,000	37,500,000

The following table presents an interesting comparison between the 1900 Michigan Railway Appraisal, the 1902 valuation made by the engineer of the State Board of Assessors, the 1902 State Board Assessment, and the 1903 assessments of that Board, so far as these various assessments and appraisals pertain to the **Michigan portions** of the Michigan Central and Pere Marquette roads:

#### Michigan Central.

1900 Michigan Railway Appraisal.....	\$49,663,417
1902 Appraisal by Engineer Walker.....	56,252,000
1902 State Board Assessment.....	45,000,000
1903 State Board Assessment.....	55,400,000

#### Pere Marquette.

1900 Michigan Railway Appraisal.....	\$31,734,584
1902 Appraisal by Engineer Walker.....	36,270,000
1902 State Board Assessment.....	26,000,000
1903 State Board Assessment.....	37,500,000

This situation naturally calls for explanation. The only explanation contained in the record and presented to this Court, is this:

The State Board of Assessors consisted of five members, namely, Messrs. Freeman, Sayre, McLaughlin, Dust and Jenks.

When the Board met to finally fix the assessments, Com-

missioner Sayre insisted on putting the Pere Marquette at only 22 millions, being **more than 6 millions below the physical valuation** of that road in 1900, besides laying out of question not only the franchise value contained in the appraisal of that year, but also the great increase of value since that time. Commissioner Freeman advocated 46 millions as the valuation for the Michigan Central.

(Dust's Test., R. p. 443.)

Dust's judgment of the value of the Michigan Central was 51 or 52 millions, and that of the Pere Marquette 36 millions. (Dust's Test., R. p. 439.)

McLaughlin's judgment of the value of the Michigan Central was 55 millions and of the Pere Marquette 35 millions. (McLaughlin's Test., R. p. 432.)

The views of Mr. Jenks are not given in the record, as his term was about to expire and he was not present when the review was finally closed. We can only infer what his judgment was as to the value of these roads from the testimony of Mr. Dust that Mr. Sayre practically threatened Mr. Jenks with a failure to receive re-appointment and apparently upon the ground that he was not favorable to keeping down the valuations of the roads. Mr. Sayre does not deny making the remark attributed to him from which the inference stated above is drawn. (Dust's Test., R. p. 440; McLaughlin's Test., R. p. 433.)

It is the testimony of Engineer Walker that Commissioner Freeman was anxious to cut down the valuation of the Michigan Central, and Commissioner Sayre equally anxious to cut down that of the Pere Marquette; that these two Commissioners showed more anxiety about reaching low values for these two railroads than any other roads; that their valuations on those properties seemed fixed in advance, and that during the entire assessment there was an effort made by Assessors Freeman and Sayre to secure the assessment of those proper-

ties at or near the figures first announced by them. He testified that Mr. Freeman stated in his presence that "The power of these great corporations could not be neglected." (Walker's Test., R. pp. 638-9.)

Mr. McLaughlin testifies that Mr. Sayre seemed more anxious for a reduction of the Pere Marquette than the other members, and says that Mr. Sayre insisted that the valuations which the Board was about to place were higher than the railroads would stand, and at one time made to Mr. McLaughlin the remarkable suggestion that he (Sayre) could find out what assessments the railroads would be **satisfied to pay upon** without litigation, and asked Mr. McLaughlin if he wished him to find out. (R. p. 433.)

That the valuations finally agreed upon did not represent the judgment of either Mr. McLaughlin or Mr. Dust, is plainly stated by them. Mr. McLaughlin says (referring to the proposed valuation of the Michigan Central): "The 46 millions did not represent my judgment. My judgment was it should be higher, and the 45 millions finally fixed was still more remote from my best judgment." (McLaughlin's Test., R. p. 434.)

He further states that his opinion was that the Pere Marquette should have been valued in the neighborhood of 35 millions. (R. p. 432.)

Mr. Dust says that from the experience had and investigation made, the assessments of both the Pere Marquette and the Michigan Central in 1902 were too low. (R. p. 440.)

That Commissioners Freeman and Sayre were convinced of that fact at least as early as 1903, seems apparent from the assessments made that year.

The 1902 appraisal of the Michigan portions of the Railway properties of the Michigan Central and Pere Marquette Railroads does not seem to have been even the result of a fair compromise of views. The valuations insisted upon by



Messrs. Sayre and Freeman respectively, were, under all the circumstances referred to, lower than seems consistent with good faith judgment. The two other members of the Board who finally agreed to the low valuations seem to have done so through great pressure, and as a matter of necessity to the reaching of any agreement whatever. The attitude of Commissioners Freeman and Sayre toward these two Railroad Companies is indicated by their connection with this cause, especially in the voluntary making of affidavits to be attached to the bills of complaint therein as basis for an injunction restraining the collection of the revenues of the state, with the assessment of which they were entrusted.

See Exs. A. & B attached to Bill of Complaint herein, R. pp. 21, 24.

They made these affidavits at the request of the attorney of one of the railroads, with the knowledge that both Commissioners Dust and McLaughlin had refused to make such affidavits, and without consulting anyone connected with the State administration as to the propriety of their so doing, except that after the affidavits were made, and they learned that Dust and McLaughlin had refused to make an affidavit, they asked that they be held up for a short time, during which the opinion of the Railroad Commissioner was asked by Mr. Freeman.

Freeman's Test., R. pp. 138, 139.

Sayre's Test., R. p. 150.

It is fairly inferable from the record that the argument of Mr. Sayre that the railroad assessments should be reduced to as low a percentage of value as in the opinion of Commissioners Freeman and Sayre the general properties of the state were assessed at, was, in connection with the other arguments and the pressure referred to, controlling.

It is noticeable that the assessments as made were less than 82 per cent. of the appraisals made by the Engineer of

the Board of Assessors, in the making of which he testifies that he followed the plan adopted by the Board.

The record presented to this Court contains no testimony on the part of either Messrs. Freeman or Sayre in dispute of the testimony of the other Commissioners referred to herein.

While we insist that the real value of appellant's railroad properties is open to inquiry herein, without proving fraud in the making of the assessment, we submit that it appears from the record that the assessment in question did not in fact represent the real judgment of the members of that Board and that the properties referred to were purposefully under-valued.

There is no occasion to attribute corrupt motives to any member of the State Board of Assessors. What has been written is not intended so to do. Whatever may have been the motive for an appraisal below real, honest judgment, whether a desire to assess on a supposed basis of the assessment of the general properties of the state, whether fear of litigation or otherwise, such purposeful under-valuation was "intentional and therefore fraudulent" in law.

### THIRD.

#### **Appellant's Railroad Property was in Fact Substantially Under-valued in the 1902 Assessment.**

##### **1. General condition of Michigan Central System.**

The following facts are important in determining the value of appellant's railroad properties.

a. **The Michigan Central System** consists of the main line of the Michigan Central railroad proper, extending from Detroit to Chicago, and fourteen subsidiary companies whose lines lie in Michigan, Canada, Illinois, Indiana and Ohio. A list of these subsidiary companies appears in schedule "739a" following page 544 of the Transcript of the Record.

The Michigan Central Railroad Company owns none of



these subsidiary lines entire. It controls them for the most part either by lease or by operating contract, as in the case of the Canada Southern. The latter road owns the stock of the Michigan, Midland & Canada, and the Toledo, Canada Southern & Detroit railroads. The Michigan Central Railroad owns large amounts of the stock and bonds of many of its subsidiary companies. (Thompson's Test., R. p. 598, Schedule "831a" following p. 596.)

The total mileage of the system aggregates 1657.74 miles.

The Michigan mileage is 68.56202 per cent. of the system, or 1136.58 miles. (Thompson, R. p. 598.)

b. **The physical valuation, and a comparison between that valuation and bond values.** The cost of reproducing the physical properties of the railroads comprising the Michigan Central system on April 15, 1902 (being the date as of which the assessment in question is made), is shown by the undisputed testimony of Prof. Mortimer E. Cooley, Dean of the Department of Engineering of the University of Michigan, and of a large number of civil and mechanical engineers who, under the direction and supervision of said Cooley, made the appraisal not only of the railroads in the Michigan Central system, but of the other railroads taxable in Michigan. The cost of reproducing the Michigan portion of the physical properties of railroads comprising the Michigan Central system, after making proper deductions on account of depreciation from use and wear, is shown to be (exclusive of cash and supplies) .....\$43,151,815

The cash and supplies on hand (Michigan portion)

at the last named date amounted to..... 2,959,196

Total Michigan portion physical properties, cash

and supplies .....\$46,111,011

See admission as to "Physical appraisal of Railroad properties," R. p. 489.

Schedule "739a" following p. 544.  
Thompson's Test., p. 612.

Not only is there nothing to impugn this physical valuation, but the undisputed testimony of Engineer Walker of the Michigan State Board of Assessors is that it is too low. He shows that the appellant's report to the Board of Assessors shows the cost of the physical properties to June 30, 1902, to be \$45,191,755. He adds that "These figures shown in the book of accumulative cost would be higher except that the Company charges permanent improvements to operating expenses." (R. p. 614.)

Treasurer Cox of the appellant railroad corroborates this statement, saying: "If the Michigan Central were built today on the basis of present appliances it would cost much more than if built twenty years ago with the appliances then in use, and probably much more than appears on the books to be its cost, as we have paid for many changes out of earnings instead of capital." (R. p. 658.)

As to the general condition of the Michigan Central system, Treasurer Cox says: "The Michigan Central stands conspicuous among Michigan railroads for the high quality of its equipment, track, right of way, numerous improvements, and the high grade in which the road and its stock is kept up. I know of no other road in Michigan which compares with it favorably in that respect. While there have been years when we have let the property run down, taking all the years together, the process of betterment has been steadily going on. It is a part of the Vanderbilt system of operating roads to bring them to as high a state of efficiency as possible; that idea has been applied to the Michigan Central." (R. p. 658.)

There is nothing to the contrary of this testimony as to the physical valuation and general high grade of appellant's railroad properties.

**Physical valuation as compared with bonds.** In this discussion and in the valuations of appellant's railroad properties no account will be taken of bonds held by either the Michigan Central Railroad Company or any of its constituent companies.

The fact of the bonds held by the general public

April 15, 1902, was.....	\$43,049,000
The market value of the bonds held by the general public was.....	46,357,000
The unfunded debt was.....	2,621,056

This latter amount added to the face of the bonds makes the par value of the indebtedness held by the general public, \$46,670,056; or, added to the market value of the bonds so held, makes an aggregate of \$49,978,056.

**The comparison between the physical values and the bond values is significant.** The total bond issue on the entire system (aside from nearly \$3,000,000 of bonds on subsidiary lines owned by Michigan Central and Canada Southern—831a) is thus substantially the same as the physical valuation of the Michigan portion only, which is but about 68 per cent. of that of the entire system. This leaves out of physical values alone, regardless of non-physical element, a stock value of many millions of dollars.

**c. Michigan Central stocks and their market value.** With respect to stocks also no consideration is had or account taken of stocks held by the parent company. The only stocks which are important to be considered here are the stock of the Michigan Central Railroad Company proper, and of the Canada Southern. The Michigan Central stock (par) in the hands of the public on April 15, 1902, was.....\$18,738,000  
The Canada Southern stock (par) in the hands of the public was.....15,000,000

This appears by schedule "831a" following page 596 of the Transcript of Record.

the Michigan Central Railroad that for the five year period from 1898 to 1902, both inclusive, the average net earnings per year over the entire system **after the payment of taxes**, was \$3,620,377, and of the Michigan portion, \$2,503,345. The net earnings for the Michigan portion for the year 1902 were above the average for the five year period, being (after payment of taxes), \$2,516,050. (See Tables, R. pp. 510, 511.)

Complainant's expert witness, Prof. Johnson, of the University of Pennsylvania, corrected the reported net earnings for the ten year period from 1893 to 1902, both inclusive, by adding certain sums admittedly paid from operating expenses on account of permanent additions, and made the average for the ten year period, before payment of taxes, for the entire system, \$4,268,462.75, and for the Michigan proportion, \$2,923,896.98. (R. p. 671.)

g. **Permanent improvements paid from operating expense.** The net earnings referred to are so shown after including in operating expense payments for betterments and additions, as shown by the testimony of, and schedules furnished by Clerk Comstock of the Michigan Central Auditor's office, amounting from 1898 to 1902, to \$5,198,012.72, or an average per year paid from operating expense on account of betterments and additions, \$1,039,602.54. The additions alone (excluding betterments) were, during the five year period named, \$1,829,771.81, or an average on account of additions alone, paid from operating expense, per year, \$365,954.36. (Comstock's Test., R. pp. 678-690; Prof. Adams' Test., R. p. 805.)

Reference to the schedule on page 805 shows that the payments on account of betterments and additions have steadily increased from 1898 to 1902.

The **report of the Michigan Central Railroad** shows that in 1902 it was able to pay \$1,383,939.22 for permanent improvements from operating expense, to charge against net

income for improvements, \$210,000, to pay 4 per cent. on its stock and interest on its bonds, and still pass \$1,41,646.21 to surplus. (Test. of Engineer Walker, R. p. 634.)

This testimony is entirely undisputed.

The Interstate Commerce Commission, in an advance rate case, found, upon testimony presented by the Michigan Central Railroad, that this Road charged improvements to operating expense as follows: In 1900, \$1,101,271; in 1901, \$1,181,618; in 1902, \$1,383,939. (Test. of Statistician Adams, R. pp. 499, 530.)

**h. Operating expense. Ratio as affected by charging additions and betterments thereto.** The result of this system of charging betterments and additions to operating expense was that the Michigan Central operating expense from 1898 to 1902 ranged from 72.99 per cent. of its gross earnings in 1898 to 76.93 per cent. in 1902, there being a marked increase during the last three years over the two former years of that period.

As showing the comparison between the Michigan Central operating expense ratio with that of other roads, a table has been prepared by Statistician Adams, found on page 508 of the Transcript of Record. By this it appears that as contrasted with the Michigan Central operating expense, the average of Group 3 (which includes Ohio, Indiana, the southern peninsula of Michigan, small portions of Illinois, Pennsylvania and New York)—the operating expense of which group is among the highest in the country—for the same years 1898 to 1902, inclusive, ranged from 71.18 per cent. in the first year to 69.49 per cent. in the latter year; that the average of Group 6 (which embraces A., T. & S. F., C. & A., C. & N. W., Chi., B. & O., Chi., M. & St. P., Chi., R. I. & P., Great Northern and Illinois Central), ranged from 62.17 per cent. in 1898 to 61.48 per cent. in 1902; and that of the entire United States from 65.58 per cent. in 1898 to 64.66 per cent. in 1902.

It thus appears that the ratio of operating expense of the strong, well equipped and prosperous Michigan Central Railroad is the largest shown in the table presented, except that of the confessedly poor Ann Arbor road, and that for the last three years in the period taken, the Michigan Central ratio of operating expense was the largest of any road shown, and that while in the case of the other groups, and in the average of the entire United States the ratio of operating expense lessened as traffic increased, in the case of the Michigan Central it rapidly increased, even in advance of the increase in its traffic.

That this condition (and thus the smaller net earnings reported) is due entirely to the practice of charging permanent improvements to operating expenses, further appears from the following considerations:

It appears by the undisputed testimony of Statistician Adams and Clarence H. Wildes that a normal operating expense is under 70 per cent., and by the testimony of Engineer Walker that the Michigan Central operating expenses have been assigned arbitrarily and out of proportion to the business done. (Prof. Adams' Test., R. p. 500; Wildes' Test., R. p. 575; Walker's Test., R. p. 631.)

Not only does the table referred to on page 508 of the Transcript of Record so show, but the proposition is further fortified to a demonstration by the table presented by Prof. Cooley and found on page 819 of the Transcript of Record, by which it appears that excluding from the Michigan Central operating expense (from 1893 to 1902) both taxes and betterments (column 10) the ratio is still larger every year since 1894 than the average in the entire United States, **including taxes** (column 14), and that the Michigan Central operating expense, **including taxes** (column 8), and excluding betterments, is larger every year beginning with 1895 than the average of Group 3 (column 13).

i. **Dividends paid by appellant.** From 1890 to 1892 the Michigan Central Railroad paid 5 per cent. dividends; from 1892 to 1894,  $5\frac{1}{2}$  per cent; from 1894 to 1902, 4 per cent. (Adams' Test., R. p. 509.)

Reference to the table of net earnings from 1893 to 1902 thus shows that as the **net earnings** have **increased** (even in spite of their depression from the practice of charging betterments and additions to operating expense) the **dividends** have **decreased**. The reason for this clearly appears from the testimony of banker Wildes as to his conversations with President Ledyard and the latter's admissions of the real value of the stock and his proposition to pay larger dividends later, presumably when the remaining minority stock is bought in. (Wildes' Test., R. pp. 575, 576.)

For several years the Canada Southern has paid  $2\frac{1}{2}$  per cent. dividends. (Thompson, R. pp. 597, 598.)

These dividends have likewise been depressed by the system of charging betterments and additions to operating expense.

See Tables presented by Auditor's clerk Comstock, R. pp. 685-690.

For at least the last two or three years before 1902, and including that year, the reports of the Michigan Central Railroad to its stockholders showed that notwithstanding it had paid from 75 per cent. to 81 per cent. of its gross earnings for so-called operating expenses (R. p. 651) it had earned net about 6 per cent. (Cox, R. pp. 652-658; Marwick, R. p. 652.)

In fact, if the net earnings were corrected on account of betterments and additions charged in operating expenses, the surplus **above the reported 6 per cent. net earnings** would range, in the case of the Michigan Central, from 1.8 per cent. in 1898 to 5 per cent. in 1902, and in the case of the Canada Southern, from a fraction of 1 per cent. in 1898 to 4.6 per cent.



in 1901, and 3.5 per cent. in 1902. This appears by the table on page 805 of the Record.

j. **Net returns to Stock and Bond investors.** The result of all these conditions is that, notwithstanding the small dividends paid, by reason of the public's knowledge of the road's strength and earning capacity, and the justified expectation of higher dividends later, the average net return to the investor in Michigan Central stock from 1898 to 1901, even at the price of \$1.15 paid by the New York Central therefor, was but 3.48 per cent., and at the higher market prices prevailing later, the net return was even less.

**Net return to bond investors.** The net interest returns to investors in Michigan Central bonds for the year 1902, taking into account the market price paid for the bonds, are as follows: according to the computation of banker Lisman, from 3.20 per cent. to 3.40 per cent. (R. pp. 565-7, 570); according to the computation of Prof. Adams, from 3.25 per cent. to 3.5 per cent. (R. p. 502); according to Mr. Thompson's computation, over a period of 8 months before and 4 months after April, 1902, from  $3\frac{1}{4}$  per cent to  $3\frac{3}{4}$  per cent. (R. p. 610), or an average of about  $3\frac{1}{2}$  per cent. Mr. Wildes says these bonds are good investments on a 3.75 per cent. basis (R. pp. 574, 576), and Mr. Lisman says they are "A No. 1" (R. 570.) They are regarded as so good that they are "legal" for New York savings banks, etc. (Lisman, R. p. 568.)

This testimony as to bond values, the net return to the investor, and that there is an abundant market for Michigan Central bonds at the prices stated, is undisputed. In fact, Mr. Woodlock, editor of the Wall Street Review, as a witness for appellant, testified in 1904 regarding the bonds of the Michigan Central (as well as several other roads) that the "market was sufficient to take care of a  $3\frac{1}{2}$  per cent. bond issue of these roads at par and better, notwithstanding taxa-



tion; plenty of good  $3\frac{1}{2}$  per cent. bonds have been worth par until within a year or so." (R. p. 662.)

For the purpose of showing that the Michigan Central Railroad properties were under-assessed by the State Board of Assessors for the year 1902, three different methods of computing values are presented by defendant, namely: (1) The capitalization of net earnings; (2) The stock and bond plan; and (3) The Cooley and Adams plan, so-called, by which there is added to the physical values such non-physical value as results from capitalizing the final net surplus earnings remaining after paying a proper annuity or interest rate on the physical value. Not only does each of these methods yield a value far in excess of the 1902 State Board Assessment, but the valuations reached by each of these methods are so nearly alike as to furnish mutual corroboration.

**2. The appraisal of the railroad as a unit, including both physical and non-physical values, and the apportionment thereof upon a track mileage basis, is proper.**

The right to appraise a railroad for taxation as a unit and to include in such appraised valuation both the physical and non-physical elements, is too well settled to require discussion. All of the experts sworn in the case, including Prof. Adams and Mr. Green, as well as Prof. Johnson, who was presented by appellant, affirm the existence of this non-physical element, by whatever name it may be known. (R. pp. 496, 553, 669-70.) Prof. Adams defines it as the value in excess of that found by the Engineer's inventory of the property (R. 496.) Prof. Johnson says he includes in the term "all the elements which Mr. Adams enumerated as elements of non-physical value." (R. pp. 669-70.) It is sufficient, however, to say that both by the decisions of this Court, by the express provisions of the statute of Michigan, and by the decisions of the Supreme Court of that state construing its own statute, the right to tax the rail-

way as a unit and to include therein the franchise value, is definitely established.

We refer to the following decisions of this Court:

Adams Express Co. vs. Ohio State Auditor, 165 U. S. 194.

Am. Express Co. vs. Indiana, 165 U. S. 255.

Adams Express Co. vs. Kentucky, 166 U. S. 185.

Gulf, etc. Ry. Co. vs. Hewes, 183 U. S. 66.

Pullman Palace Car Co. vs. Penna., 141 U. S. 18.

Maine vs. Grand Trunk Ry Co, 142 U. S. 217.

New Orleans Ry. Co. vs. New Orleans, 143 U. S. 192.

Taylor vs. Secor (State R. R. Tax Cases), 92 U. S. 575.

**The Michigan Statute.** But we are not left to rely upon a rule of decision in the absence of statute. The statute of Michigan under which the assessment in question was made, expressly provides both for the assessment of railway property as a unit and for including therein the non-physical value. The statute provides that "The term 'property' as used in this act, shall be deemed to include all property, real or personal, belonging to the corporation, subject to taxation under this act, including the right-of-way, road-bed, stations, cars, rolling stock, tracks \* \* \* and all other property used in carrying on the business of such corporations, or owned by them respectively, and all other real and personal property, and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property."

P. A. Mich. 1901, p. 238, Sec. 5.

**Track mileage apportionment.** This Court has expressly sustained the right of a state to impose a tax based on the proportion of the value of the property within the state to the whole property of the Company.

State R. R. Tax Cases, 92 U. S. 608, 611.

Adams Express Co. vs. Ohio State Auditor, 166 U. S. 185.

Pullman Palace Car Co. vs. Pennsylvania, 141 U. S. 18.

Maine vs. Grand Trunk Ry. Co., 142 U. S. 217.

W. U. Telegraph Co. vs. Taggart, 163 U. S. 21.

In *Pullman Palace Car Co. vs. Pennsylvania* (supra) it was said by this Court, quoting from Mr. Justice Miller in *State Railroad Tax Cases*, 92 U. S. 608, 611:

"It may well be doubted whether any better mode of determining the value of that portion of the track within any one county has been devised than to ascertain the value of the whole road, and apportion the value within the county by its relative length to the whole. \* \* \* This Court has expressly held in two cases, where the road of a corporation ran through different states, that a tax upon the income or franchise of the road was properly apportioned by taking the whole income or value of the franchise, and the length of the road within each state, as the basis of taxation. In *re Delaware R. Tax*, 18 Wall. 206; *Erie R. Co. vs. Pennsylvania*, 21 Wall. 492."

But the statute of Michigan expressly gives such authority. It provides: "In determining the true cash value of the property of railroad \* \* \* companies which own, lease or operate lines partly within and partly without this state, said Board shall be guided in ascertaining the property subject to taxation in Michigan by the relation which the number of miles of main track within the state of Michigan bears to the entire mileage of the main track of said companies both within and without this state." (P. A. Mich., p. 242, Sec. 8.)

There is no evidence in the record that such track mileage apportionment results unfairly to the Michigan portion.

The cross-examination of Prof. Adams and of Mr. Green suggests, however, a contention on appellant's part that the inclusion of non-physical value in the assessment of railroads puts those corporations on a different basis than other taxable property. There is no merit in such contention.

3. The taking of franchise values into account in determining assessed valuations of railroad properties under the Michigan *ad valorem* tax law does not create lack of uniformity of taxation, nor does it put railroad properties on a different basis than property generally in the state.

a. Both railroad property and general properties are required by statute to be assessed on the same basis, namely, true cash value.

The non-physical value in all property in the state taxable under the general law, so far as such intangible value is found to exist, must be taken into account; in other words, had appellant's railroad properties been assessed under the general law of the state instead of under the railroad *ad valorem* tax law, its non-physical value must have been included. The railroad tax statute merely followed the general Michigan rule as declared by the Supreme Court of that state in the construction of its general statute.

All property in Michigan, whether railroad or otherwise, is thus put upon precisely the same basis with respect to the assessment of non-physical value.

The present railroad tax law expressly requires the assessment of railway properties at their "true cash value."

P. A. Mich. 1901, p. 241, Sec. 8.

Property, generally, throughout the state is required to be assessed on precisely the same basis.

C. L. Mich. 1897, Sec. 3847.

In the case both of property having a franchise value and that having no such value, the statute defines "cash value" as

the "usual selling price which could be obtained therefor at private sale, and not at forced or auction sale."

C. L. Mich. 1897, Sec. 3850.

Detroit Citizens St. Ry. Co. vs. Common Council,  
125 Mich. 682.

If franchise value is not included in the assessment, it is, so far as the rule of law is concerned, only because the given property has no such value.

Steam railroads generally have an actual franchise value as declared not only by this Court, but by the Supreme Court of Michigan. So far as steam railroads are concerned, the statute expressly provides that this franchise value be taken into account in their assessment.

P. A. Mich. 1901, p. 238, Sec. 5.

The argument that because it is not practicable to assess a non-physical value in the case of an ordinary business because of a lack of method by which net earnings can be ascertained as readily as in the case of a railroad company, has no merit. In fact, and as recognized by the authorities, few manufacturing and commercial corporations have a value in excess of the cost of reproducing their physical property.

Adams' Test., R. pp. 514, 518-19.

Green's Test., R. pp. 551-564.

This proposition is expressly declared by the Supreme Court of Michigan in *Detroit Citizens St. Ry. Co. vs. Common Council*, 125 Mich., at page 681.

**Railroads are in class by themselves.** The difference between railroads and ordinary manufacturing and commercial corporations as recognized by the Courts, including their monopolistic character, the fact that their traffic is not exposed to competition of the kind incident to general manufacturing and commercial business, the right to use public property, occupation of the highways, and the right of eminent domain, the fact that the service is public and the traffic one of increas-

ing density and increasing returns, are enumerated in the testimony of Professor Adams. (R. pp. 497, 514.)

That these characteristics differ from the good will of an ordinary business appears not only from Professor Adams' testimony referred to, but by the decision of the Supreme Court of Michigan in *Det. Cit. St. Ry. Co. vs. Common Council* (*supra*). But it is expressly held by the Supreme Court of Michigan in the case last referred to, that under the general tax law regarding uniformity of valuation, wherever such non-physical or franchise value actually exists, whether in the case of gas companies, water companies, or manufacturing establishments and large buildings favorably located and adapted to special uses, in excess of the cost of reproduction of the physical assets, such value should be taken into account in assessments under the general tax law.

Detroit Cit. St. Ry. Co. vs. Common Council  
(*supra*.)

That Court has thus held that the taxation of corporate franchises, even in the absence of a statute expressly providing therefor, that is to say, made under the general tax law, does not violate the statutory and constitutional requirement of uniformity. All property similarly situated it, by this decision, on precisely the same basis. This construction of the general tax law of Michigan was so adopted in the case of the assessment of the property of a street railway company under the general tax law of the state. This general tax law contains no express mention of franchises and the decision was thus necessary to a decision of the case.

It is noticeable and significant that the railroad ad valorem tax law in question was passed immediately following the decision of the Michigan Supreme Court in *Detroit Citizens Street Ry. Co. vs. Common Council* (*supra*), that decision having been rendered February 12, 1901, and the statute in question having been approved May 27, 1901—and that the

manner prescribed in the railroad tax law for taxing franchise values **follows directly** that declared proper and necessary under the general tax law of the state.

P. A. Mich. 1901, p. 235, Sec. 5.

Detroit St. Ry. Co. vs. Common Council, 125 Mich. 673.

We submit that it is clear that the law under which appellant is taxed, and the inclusion in its assessment thereunder of non-physical values, does not create lack of uniformity of taxation, nor does it put railroad properties upon a different basis than that occupied by property generally in the state.

b. **Separate valuation of franchise.** Appellant's franchise was not separately valued, but such separate valuation would not be invalid.

Appellant's witness, Prof. Johnson, testified that if the State Board of Assessors should arrive at a valuation of property by computing, first, the physical value, and, second, the franchise value, he thought it would result in a separate valuation of the franchise of the corporation. (R. p. 670.)

This was objected to as incompetent and calling for a conclusion not a basis of expert testimony.

If this testimony is intended as a basis for attacking the railroad assessment in question, it is manifestly without force. The bill of complaint does not allege any invalidity of this nature with respect to the assessment. Nor is there any testimony whatever in the record tending to show that such a course was taken. On the contrary, the testimony, so far as it has any significance either way, is against an implication of a separate valuation of the franchise. (McLaughlin's Test., R. p. 432 and ff.; Dust's Test., R. p. 439 and ff.)

The conclusive answer to this suggestion is found in the fact that the report of the State Board of Assessors for 1902 expressly states that in the valuation of railroad property, in the opinion of that Board, no one plan should be arbitrarily



followed, but that each "property should be subjected to an examination covering every possible phase of the question." (R. p. 345.)

But even had some members taken into account the franchise value as a tangible and fixed sum to be included in connection with the value of the tangible property in arriving at the assessed valuation of the railroad as an entirety, such fact would not vitiate even an assessment. In *Detroit Cit. St. Ry. Co. vs. Common Council*, 125 Mich., at page 705, where the valuation of a street railway, including its franchise, was under consideration, it was said:

"Perhaps no two of the assessors reached the result by the same process, but this is not material if they finally concluded that the property was honestly worth, in the market, in cash, the sum assessed; we think this assessment should not be set aside merely because an effort may have been made by someone to separate tangible and intangible values; a thing that was unnecessary and one that was harmless, provided, as already stated, the Board really did reach the conclusion that the property was worth, and would bring, in cash, the sum adopted."

If the testimony of Prof. Johnson was aimed at the Cooley and Adams appraisal, it is clearly immaterial. No assessment has in fact been had upon that plan.

**The testimony of computations and valuations.**

The valuations of appellant's physical properties are discussed on pages 100-103 of this brief. The value of the Michigan Central and Canada Southern stocks and bonds held by the general public, the net return thereon to investors, and the proper capitalization rates, and other information necessary to a computation of the actual values by each of the three methods referred to, were given by six witnesses specially qualified for the purpose, namely: Henry C. Adams, Clarence



H. Wildes, Frederick J. Lisman, Melville W. Thompson, Thomas L. Greene and James Walker.

Prof. Adams, whose record and experience is shown on pages 594-5 of the Transcript of Record, in addition to his academic and theoretical education, has had a broad experience peculiarly fitting him for an appraisal of the nature made by him in this case. Since 1887 he has been Statistician of the Interstate Commerce Commission. He was the statistician for the Postal Service Commission in 1899, was expert agent in charge of the Transportation work in the United States Census of 1850. Through his relations (as Interstate Commerce Statistician) he is Chairman of the Committee on Uniform Railway Statistics of the Association of Railway Commissioners, and has published statistical reports of the work of the Interstate Commerce Commission during his entire connection with that body, as well as volumes on Transportation for the Census Report of 1900, and a Compendium of the Railways of the United States for 1902. He participated with Prof. Cooley in making the Michigan Railway appraisal of 1900 before referred to. He has given special attention to the subject of the history and evolution of taxation of railways in the United States, and is the author of a history of taxation.

Prof. Adams has carefully investigated the financial condition and value, and the earning capacity of the Michigan Central Railroad, as well as of the other railroads involved in kindred litigation. His testimony is found on pages 494 and following of the record. He presents tables showing the gross income of Michigan Railroads per 10,000 inhabitants, per 100 square miles and per mile of line. This table is found following page 510 of the Record. His tables showing the gross earnings and net earnings of the entire system and of the Michigan portion from 1898 to 1902, both inclusive, are found on pages 510 and 511 of the Record. His testimony

upon these subjects is referred to on pages 100-111 of this brief, in the discussion of the general title: "The Evidence of Actual Value of Appellant's Railroad Property in 1902."

Mr. Wildes has been for twenty-five years a banker and broker in investments and securities, is a member of the banking firm of J. & W. Seligman & Co., and is familiar with the securities of the Michigan Central and other railroads. His testimony (found on page 572 and following, of the Record) regarding the market value of the Michigan Central stock in 1902 and previous years, and its high and low price for the years 1900, 1901 and 1902, his dealings in Michigan Central stock, his relations with President Ledyard in connection therewith, and his estimate of the net return to investors in Michigan Central bonds, is referred to on pages 104-111 of this brief.

Mr. Lisman is a banker and broker in New York, making a specialty of railroad bonds. He is a specialist, and the principal dealer in all of the smaller issues of railroad bonds. He furnishes the Commercial and Financial Chronicle quotations for railroad bonds. His business ranges from \$20,000,000 to \$75,000,000 a year. He is familiar with the bond issues of the Michigan Central and their value, and has made sales of Michigan Central stock.

His testimony (found on page 564 and following, of the Record) relating to Michigan Central bond and stock values, the net returns to the investor in Michigan Central bonds for the period in question, is referred to on pages 104-110 of this brief.

Mr. Thompson has made a careful study of the Michigan Central stocks and bonds. His table of stock values from October 28, 1901, to August 5, 1904, is found on pages 603 to 604 of the Record. Schedule "831a" (following p. 596 of the Record) contains a detailed description of the Michigan Central stocks and bonds, the stock exchange transactions

and volume of sales, and the market value of the various classes as shown by the financial and stock exchange reports and transactions. His testimony as to the market value of the stock and bonds for the period in question, is found on pages 104-110 of this brief.

Thomas L. Greene (whose record and experiences are found on pages 551 and 552 of the Record) was, at the time his testimony was taken, Vice President and Manager of the Audit Company of New York. He was previously an officer of the Manhattan Trust Company of that city, for six years editorial writer on financial and business subjects for the New York Evening Post, is the author of a work on corporation finance, as well as papers and periodicals on financial and business subjects, and has had a broad, practical experience in the investigation of questions relating to those subjects. His testimony as to the rates that investors in Michigan Central stocks are satisfied with, and the proper capitalization rate for obtaining intangible values, is found on pages 555-6 of the record.

James Walker, consulting engineer to the State Board of Assessors, since October, 1890, has been engaged in valuing railroad property, and acted as an advisor to the State Board of Assessors in the 1902 railroad assessment. He has studied and abstracted the information contained in the Railroad Companies' reports to the Michigan State Board of Assessors, to the Michigan Railroad Commissioner and to the officers of adjoining states, and to the Interstate Commerce Commission. His duties included advising the State Board of Assessors, in an expert capacity, of the value of the railway properties under consideration.

He has made a careful and detailed valuation of the Michigan Central properties, his plan being based upon a consideration of all the elements surrounding the property, including the physical condition, the amount of stocks, bonds and cur-

rent liabilities, the income and operating accounts of the road over a series of years, the stability of the income account, the extent of permanent improvements, repairs and renewals, with the design of ascertaining what would be the selling price of the property. (R. pp. 612, 613.)

His analyses of Michigan Central traffic statistics, both freight and passenger, are found on pages 616 to 634 of the Record, and include charts indicating the relation of the operating expenses to the gross earnings from 1882 to 1902. He also presents computations of taxes paid by the appellant railroad company and other railroads on local real estate. (R. p. 636.) His testimony as to these subjects generally is referred to in the discussion on pages 105-107 of this brief.

4. Each of the three methods of valuation employed has received the approval of the Courts as furnishing a fairly safe guide for the purpose of determining values for taxation.

a. **The net earnings method.** A valuation by capitalization of net earnings has received the approval of the Courts.

Railroad & Tel. Cos. vs. Equalizers, 85 Fed. 302.

Chicago Union Trac. Co. vs. State Board, 114 Fed.

557.

People vs. Hicks, 40 Hun, 598.

People vs. Assessors, 2 N. Y. S. 240.

People vs. Reid, 64 Hun, 553.

People vs. Kalbfleish, 49 N. Y. S. 546.

Taylor vs. R. R. Co., 88 Fed 350. (C. C. A. 6th Cir.)

L. & N. Ry. Co. vs. Coulter, 131 Fed. 282, 304.

In **Railroad & Tel. Companies vs. Equalizers** (supra) Judge Clark said:

"When we come to **actual earnings**, a sensible and **safe** element is reached which may be properly regarded in determining actual as distinguished from purely speculative values on property."

In **People vs. Assessors** (supra) a capitalization of 5 per cent. on the net earnings for a period of five years was approved, being characterized as "the approved legal method of assessing railroads."

In **Colorado Southern Ry. Co. vs. Wright**, 151 U. S. 470, this Court quoted with approval from the decision of the Supreme Court of Tennessee:

"The assessable value for taxation of a railroad track can only be determined by looking at the elements on which the financial condition of the company depends, its traffic as evidenced by the rolling stock and gross earnings in connection with its capital stock."

This language was cited with approval in **Pittsburg, etc. Ry. Co. vs. Backus**, 154 U. S. 424.

In **Taylor vs. R. R. Co.** it was said:

"The relevancy of such items of evidence as the market values of stocks and the amounts of gross earnings and net earnings in reaching a conclusion as to the value of a railroad or telegraph line has been so often recognized by the Supreme Court of the United States that we need not discuss it."

In **L. & N. Ry. Co. vs. Coulter**, the Court says that it does not find it necessary to express any preference between the stock and bond plan and the net earnings plan.

It is not claimed that the net earnings method taken alone is infallible. It must of course be used with discrimination, and exclusive reliance cannot in all cases be placed in it. For instance, it would not be applicable when earnings are insufficient to pay an annuity on physical value, nor when earnings were unstable. But as applied to the Michigan Central Railroad Company, with its large and stable net earnings in excess of a proper annuity on physical values, the net earnings method furnishes a safe guide for determining actual

values. The testimony of Prof. Adams that "the conditions of the Michigan Central permit the application of the net earnings rule if that rule is applicable anywhere" (R. p. 512) is wholly undisputed upon this record.

Mr. Walker, who made the computation upon this plan, testifies that the plan as applied by him is based upon the consideration of all the elements surrounding the property; its physical condition; the amount of its stocks, its bonds and current liabilities; whether interest and dividends have been paid; the income and operating account over a series of years; whether the operation is the result of an extraordinary condition of the times; the operating expenses; the inclusion of permanent improvements therein; traffic conditions; and the geographical relations of other property. (R. p. 613.)

We have seen nothing in the record to impugn the reliability of this statement.

The Department of Commerce and Labor, under the authority of the federal statute, has lately made an elaborate investigation as to the methods of valuing the operating properties of railway corporations. This investigation was made under the direction of Prof. B. H. Meyer of the University of Wisconsin, who was appointed expert special agent representing jointly the Interstate Commerce Commission and the Bureau of the Census. This investigation has resulted, in the language of the letter of transmittal accompanying the report of the Director, "in the acceptance of operating railway systems as the units of appraisal and in the rule that the valuation of such systems should be arrived at by the capitalization of their true net earnings at a rate to be determined by the market value of their securities."

(Bulletin 21, Dept. of Commerce and Labor, "Commercial valuation of railway operating property in the United States, 1904," and letter of transmittal accompanying the same.)

b. **The Stock and Bond method.** The stock and bond method of valuation is based upon the proposition that the market value of the stocks and bonds of a corporation represents the estimate of the public upon the value of the properties represented thereby. The accepted rule is to take the market value of the stocks and bonds as the measure of the corporate value of the property.

This method of valuation of railroad properties has received the express approval of this Court.

State Railroad Tax Cases, 92 U. S. 575.

Pittsburgh, etc. Ry. Co. vs. Backus, 154 U. S. 421.

West. Union Tel. Co. vs. Taggart, 163 U. S. 1, 21.

Henderson Bridge Co vs. Kentucky, 166 U. S. 150.

In **State Railroad Tax Cases** Mr. Justice Miller said (pp. 604-5):

"It may be assumed for all practical purposes, and it is perhaps absolutely true, that every railroad company in Illinois has a bonded indebtedness secured by one or more mortgages. The parties who deal in such bonds are generally keen and far-sighted men, and most careful in their investments; hence the value these securities hold in market is one of the truest criteria, as far as it goes, of the value of the road as a security for the payment of those bonds.

These mortgages are, however, liens on the road, and taking precedence of the shares of the stockholder, may or may not extinguish the value of his shares. They must, in any event, affect that value to the exact amount of the aggregate debts; for all that goes to pay that debt and its interest diminishes *pro tanto* the dividend of the shareholder and the value of his share. It is therefore obvious that when you have ascertained the current cash value of the whole funded debt and the current cash value of the



entire number of the shares, you have, by the action of those who, above all others can best estimate it, ascertained the true value of the road, of its property, its capital stock and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock."

The stock and bond method of valuation has also received the approval of other Courts in the following cases:

Taylor vs. R. R. Co., 88 Fed. 350. (C. C. A. 6th Cir.)

Chicago Union Trac. Co. vs. St. B'd, 112 Fed. 607.

Porter vs. R. R. Co., 76 Ill. 561, 589.

B'd of Equalization vs. People, 191 Ill. 528.

State vs. Savage (Neb.), 91 N. W. 717.

Sanford vs. Poe, 69 Fed. 546 (C. C. A. 6th Cir.)

In **Taylor vs. R. R. Co.** the Court of Appeals of the 6th Circuit said:

"The relevancy of such items of value as the market values of bonds and stocks and the amount of gross earnings, and the net earnings, in reaching a conclusion as to the value of a railroad or a telegraph line, has been so often recognized by the Supreme Court of the United States that we need not discuss it."

In view of these decisions, the general objections to this method of valuation, presented by appellant's witness Johnson and others—that the securities of the road do not represent the actual valuation of the property; that it is not certain that the investment made at the time of the issue of the securities corresponds sufficiently closely with the actual value of the property into which the investment went; that the market values of stocks and bonds are influenced largely by speculative forces and the criticism made by the Interstate Commerce Commission upon the method as not universally applicable—requires no discussion. They are effective as against



the decisions of this Court only so far as they assert the necessity of eliminating speculative conditions which, we submit, exist in a minimum degree in the case of the Michigan Central.

Not one of the objections above referred to has any application to the case of the Michigan Central Railroad. As already shown, the physical value of the railroad is largely in excess of its entire bond issue and in excess of that valuation as carried upon appellant's books. The market values of Michigan Central stocks and bonds are not increased by speculative forces. It affirmatively appears in the record that Michigan Central securities are not the subject of general speculation. The great bulk of its stock is held by the New York Central Railroad, and thus withdrawn from market. The record in this case shows very little activity in this stock, no sales being reported for months at a time. It is rarely that Michigan Central quotations are found in any of the newspaper stock reports.

The only speculative feature suggested is the fact that dealers in minority stock have enhanced ideas of its actual value from the fact that the New York Central is ready to buy it, and expect that larger dividends will be paid when the New York Central shall have purchased all it could get of the Michigan Central stock.

But not only is this market value the estimate of the public of the value of Michigan Central securities, but the testimony is convincing that this estimate is intelligent and well founded, as shown by the testimony before referred to in this brief as to appellant's increasing prosperity and stable and steadily increasing net earnings, and its President's admission as to the actual value of the stock. Indeed, if the ownership by the New York Central of 17-18ths of the stock of the Michigan Central had any influence upon the market value of the remaining 1-18th, it would be to depress that value, and whatever increase in market values has resulted above the

price offered by the New York Central has been in spite of that depressing influence. (See Wildes' Test., R. pp. 575-6; Thompson's Test., R. pp. 601-3.)

Indeed, there is no criticism anywhere in the record upon the statement of Prof. Adams that the market price of Michigan Central stock would have been higher but for the practice of that road of paying for additions and betterments out of operating expense, and thus for the present decreasing dividends. (R. pp. 814, 816.)

In the face of these considerations, no testimony entitled to weight has been presented against the reliability of the stock and bond plan as specifically applied to the Michigan Central Railroad. Mr. Marwick suggests no reason for his opinion.

Treasurer Cox's opinion is based upon the earning capacity of the Road and the fact that there is no market for a considerable portion of the stock; but the earning capacity is shown both by the tables presented by Prof. Adams and by President Ledyard's admission, to be far in excess of the reported net earnings.

Mr. Woodlock, whose opinion is based upon the fact that the public believe that the New York Central would buy "Junior Vanderbilt" stocks at fancy prices, is compelled by the market reports to admit that the same percentage of advance shown in Michigan Central stock occurred at the same time in roads which were not "Junior Vanderbilts," such as the New York Central, Illinois Central, Pennsylvania, Chicago & Northwestern, Ann Arbor, Delaware & Hudson, Chicago, Milwaukee & St. Paul (R. pp. 663-667, thus entirely destroying the basis of Mr. Woodlock's opinion.

Mr. Russell's opinion is based upon the proposition that to his mind capitalization means cost—thus suggesting a rejection of all intangible value and an adherence only to the

physical. "No railroad has any value in excess of its physical property." (R. p. 693.)

That every caution was exercised in reducing to a minimum all speculative and uncertain elements goes without contradiction.

For instance, in obtaining the market value of bonds, accrued interest to the time of purchase was deducted.

No stocks or bonds were taken into account except those held by the general public, the value of the stock of the parent company being regarded as including the value of the securities of subsidiary roads held by that company.

Where quotations for a given security were meagre or lacking, quotations of securities in all respects similar were used as guides.

Quotations from 1890 to 1902 were carefully studied in order to make sure that unusual and speculative conditions were eliminated.

A so-called weighted average (obtained by giving effect to the number of bonds in each sale) was used so as to give a large sale relatively more influence in determining the normal price. (Adams' Test., R. p. 498.)

Unless, therefore, there is something inherently unreliable (as it has been repeatedly held there is not) in the stock and bond method of valuation, it was eminently proper to be applied here.

c. **Capitalization of final net surplus.** This method is simplicity itself. It involves, first, ascertaining the net income from operation and all other sources; deducting from this net income an annuity or interest charge upon the value of the physical property, and capitalizing the remaining surplus, thereby obtaining the value of the non-physical property. It is thus seen that the plan provides for a return upon the investment in physical properties after payment of taxes

(which are included in operating expenses) and for capitalizing the balance. (Adams' Test., R. pp. 500-501.)

This plan is manifestly safe and conservative and avoids whatever difficulties are connected with either the stock and bond plan or the method of capitalization of net earnings.

The criticism of appellant's counsel upon this method (R. pp. 522-5) that it would be possible for a railroad property earning the same gross receipts and having the same operating expenses (and thus the same net earnings) for a term of years, to be assessed from year to year at varying valuations, is completely answered by Prof. Adams. The criticism is not only based upon the practically impossible assumption that physical value, net earnings, and tax rate would remain exactly the same over a period of years, but it takes into account the tax for but the one previous year instead of an average over a term of years. (R. pp. 522, 524-5.)

Upon this proposition we need spend no time, as not only is there in the record no serious criticism upon it, but the complainant's sole expert witness (Prof. Johnson of Pennsylvania University) gives it his unaqualified approval, and has so put himself on record both in his published work on "American Railway Transportation" and as a witness in this case. His testimony is "The view held when I wrote that book (American Railway Transportation) and that I now hold is that Prof. Adams' theory of valuation (as outlined in 1900) is sound in principle, and may be employed to secure equitable taxation of railroad property." (R. p. 674.)

In the supplement prepared by Prof. Meyer to Bulletin 21 of the Department of Commerce and Labor before referred to, the following endorsement of the method employed by Prof. Adams is given:

"The method which satisfies in the highest degree the requirements of the valuation of railway systems as a whole, as well as the distribution of the

total values of such systems among states, is the inventory method. This is a composite method, each constituent element in which is designed to solve one phase of the general problem of valuation and value distribution. The basal principle of the method is an engineer's estimate of the cost of reproduction of all physical properties, "new" and in "present condition," the latter being usually expressed in terms of per cent. of the former. \* \* \* The inventory method thus embraces the net earnings method of the present valuation, and, in addition, an actual survey of every railway property which lies at the basis of the whole. It involves capitalization of net earnings, but only that part of the net earnings which is not used in paying a reasonable return on the investment in the physical properties, and taxes. The capitalized sum thus arrived at is known as the non-physical or intangible value. The total value of a railway is thus the value of its physical property, plus its non-physical value. This method is described in Paper VII, which explains the Michigan and Wisconsin methods of valuation."

Bulletin No. 21, pp. 19 and 20.

The only open questions relate to the details of the application of the plan, such as the capitalization rates to be employed, the terms of years over which the net earnings should be taken, whether taxes should be included, etc.

d. **Not an income tax.** Neither the net earnings method nor the Adams plan embracing the physical valuation increased by a capitalization of final net surplus, can properly be called an income tax either in whole or in part. Surely a tax upon a valuation so ascertained has none of the elements of an income tax. The differences between a tax on property ascertained by capitalizing its net income, and a tax

on income, are clearly pointed out by Prof. Adams and by Mr. Cooley. (R. pp. 516-17, 518, 556, 560, 562.)

The distinction is clearly recognized in  
Judson on Taxation, Sec. 327.

As said by Mr. Justice Brewer in his opinion in the Adams Express Co. case (166 U. S. 320):

"Now, it is a cardinal rule which should never be forgotten, that whatever property is worth for the purposes of income and sale it is also worth for purposes of taxation."

That the income or value of the franchises of a railroad may be made the basis for determining its value, has been frequently decided by this Court.

State Railroad Tax Cases, 92 U. S. 575.

Delaware R. R. Tax Case, 18 Wall. 208.

Erie Ry. Co. vs. Penna., 21 Wall. 492.

5. The basis on which the computations by the different methods were made, and their results.

a. The Net Earnings method.

Mr. Walker took the average gross earnings of this system for a period of five years, including 1902, deducted 70 per cent. as a normal operating expense (which is shown on pp. 107 to 108 of this brief to be higher than the normal) and thus found the net earnings. To this he applied the Michigan track mileage ratio of 68.562 per cent., and capitalized the resulting sum at 5.65 per cent., being 4 per cent. (which is higher than the yield to investors in Michigan Central stocks and bonds) added to the Michigan tax rate of 1.65, making the Michigan valuation \$61,200,000. (R. p. 634.)

The same basis of capitalization for the year 1902 would make \$70,102,600. (R. p. 634.)

b. Stock and Bond method.

Mr. Thompson took the conceded 1902 average market price of the \$43,049,000 of Michigan Central bonds held by the

general public at \$46,357,400; the conceded unfunded debt of \$3,621,056 at par; the \$18,738,000 Michigan Central Railroad stock at its undisputed 1902 average market price of \$161.58; the \$15,000,000 Canada Southern stock at its undisputed 1902 average market price .85927 (thus excluding all stocks and bonds of subsidiary roads held by the Michigan Central and the Canada Southern), applied the Michigan mileage ratio of 68.562, deducted the taxable value of the Michigan Central real estate taxed locally (\$748,000—R. pp. 635-6), and reached a valuation of \$64,632,264.

Thompson's Test., R. pp. 597-8.

Table "831a" following p. 596.

(If President Ledyard's statement of the actual value of Michigan Central stock were taken instead of the 1902 average market price, the valuation would of course be much larger.)

**c. Inventory and Capitalization of Final Net Surplus.**

Prof. Adams, as before stated, as the result of the careful investigations which he had made into the market values of Michigan Central stocks and bonds, had found the rate which investors were satisfied to receive in those bonds to be  $3\frac{1}{2}$  per cent., and upon the stocks of the road, 5 per cent. His judgment as to this return which investors were willing to accept upon this class of bonds was fortified by a comparison of quotations with the bonds of three other prominent roads. (R. pp. 501-2.)

He took the average annual net earnings for 1898 to 1902, inclusive, as reported by the appellant railroad—after deducting taxes paid, and without making any correction by reason of the amount by which the reported net earnings were depressed on account of the large sums charged to oper-



ating expense for additions and betterments, at. . \$3,620,377 00

Of this amount he took the Michigan mileage

ratio of 68.562 (R. pp. 510, 511)..... 2,503,345 00

From this he deducted an annuity of 3½ per

cent. (being admittedly the average return

investors in Michigan Central bonds—assumed

to represent physical values—were content to

receive) upon an undisputed physical valuation

(Michigan proportion) of \$46,101,011..... 1,613,535 38

---

Leaving a remainder of net earnings to be cap-

italized ..... 889,809 62

This net remainder or final surplus he capitalized

at 5 per cent.—which was much more than

investors in Michigan Central stocks were con-

tented to receive, but which is shown to be

fully equal, if not above, the market rate for

money for investments of this kind—making

the non-physical valuation.....17,789,200 00

To this he added the undisputed value of the

physical property (Michigan proportion).....46,101,011 00

---

Making the aggregate of the Michigan propor-

tion .....\$63,890,211 00

Prof. Adams' Test., R. pp. 512, 544.

It will be noted that in this computation no account was taken of the large sums paid out of operating expenses on account of betterments and additions. The net earnings taken were those reported by the appellant railroad after paying these two classes of disbursements, as well as taxes, out of operating expenses. The fact that such payments had been so made affected merely the capitalization rate. (R. pp. 530-1.)



The close correspondence between the respective valuations on the three methods employed, namely:

Net earnings method.....	\$61,200,000
Stock and Bond method.....	64,632,264
Capitalization Final Net Surplus.....	63,890,211

is significant as showing how peculiarly the Michigan Central Railroad, by reason of its prosperity, the remarkable stability of its net earnings, and its non-speculative condition, is adapted to each of these recognized methods of valuation.

The methods are mutually corroborative.

#### CRITICISMS UPON THESE COMPUTATIONS.

##### a. The Stock and Bond Method.

There is no controversy over the real or market values of the bonds.

**As to real stock values:** Three witnesses for appellant give their opinions of the value of this stock. Mr. Marwick (the accountant) thought it was worth "in the neighborhood of par in 1902 rather than over." (R. p. 649). The basis of his opinion does not clearly appear except that it may be inferred to rest generally upon his idea of actual earnings and net return to stockholders. What his idea of a proper net return should be, we are not informed. His opinion of stock values is discredited by his admission that the Lake Shore when earnings 13½ per cent. and paying 7 per cent. dividends, sold at between 200 and 300 in 1901, and at between 300 and 400 in 1902 (R. p. 652), in connection with the showing that the Michigan Central was actually earning that year 10½ per cent. after its net earnings were corrected by excluding from operating expenses amounts paid for betterments and additions, and taking into account the natural implication from the undisputed testimony of Mr. Wildes (R. pp. 575-6) that the Michigan Central will pay even more than the 6 per cent. stated by President Ledyard when all the available minority stock has been bought in.

Treasurer Cox thought, for 1902, that "The stock as a whole had no value above par" (R. p. 656) and thought the Canada Southern stock was actually worth 55 cents. He seems to base his opinion of stock value upon the proposition that because a more expensive equipment is needed to operate a railroad now than formerly, on account of increased traffic, larger engines, cars, etc., the stock is worth no more because the roads must keep a larger surplus on hand. (R. pp. 657-8.) This argument would equally apply to a taxation of shares of bank stock which represent a surplus.

He also calls attention to the fact that the  $3\frac{1}{2}$  per cent. bonds given by the New York Central for the stock at 115 sold during 1901 and 1902 at a price to net the holder about par on the stock sold. But this fact has little bearing upon the actual value of the stock as against the cash market for the stock at the time, for the New York Central could get in but very little outstanding Michigan Central stock during the entire two years referred to at the 115 price. (Table, Woodlock's Test., R. p. 661.)

The sale price of the bonds means only that those holding them (having bought perhaps as early as 1898) sold them on the basis of the money market, as the bonds in question were the direct obligation of the New York Central secured by the Michigan Central stock, in which the bondholder had no interest except in case of the New York Central defaulting on its direct obligation. (R. p. 659.)

Mr. Woodlock thought that the Michigan Central stock was worth in 1902 practically par. He says at one time "80 to par," but later says that the physical condition of the Michigan Central makes a difference in the stock's selling price and that "par would reflect that very decidedly." (R. p. 663.)

The undisputed record shows that Michigan Central stock had a minimum stable value of from 130 to 140 per cent, Mr.

Wildes stating it at 145 (R. p. 572) as compared with the average market value of 161 $\frac{5}{8}$ . (Schedule "831a" following p. 596 of Record.)

**As to the period over which stock quotations should be taken.** Manifestly the only reason for taking an average over a considerable period is to eliminate the speculative element. Mr. Greene says that a period of six months to one year is ample, and that the New York Banking Department, under the provisions of the statute requiring trust companies and banking institutions to make a report of the value of stocks and securities owned upon a certain day, has adopted a period of six months for obtaining an average of values. (R. p. 554.)

The Department of Commerce and Labor in its commercial valuation of railroad properties for 1904 adopted a six months period for market quotations as the general rule, lengthening the period whenever the changes in the market were "violent and apparently capricious." (Bulletin No. 21 referred to, p. 22.)

We submit that the period taken by Mr. Thompson (substantially one year—from October, 1901, to August, 1902) furnished a safe guide.

**Period for bond quotations.** Mr. Lisman says that a period of three to six months is sufficient to furnish a safe average. (R. p. 567.)

**Minimum value of stock.** That the Michigan Central stock has a minimum market value of 115 the complainant is estopped to deny. Not only has the New York Central an outstanding offer for the minority stock at that price (which it is not necessary to buy except as an investment—it already having a 17-18 interest) but the Michigan Central report to the state officials gives the value of the stock as about 115.

Computing the Michigan Central stock at 115, the Canada Southern at the price shown by the reports, and excluding the unfunded debt, as well as the stock held by the general

public other than the two classes above given, the value of the Michigan portion of the system on this conservative stock basis, is shown to be upwards of 55½ millions, as follows:

Market value of bonds in hands of public.....	\$46,357,400
Michigan Central stock (\$18,738,000) at 115.....	21,548,700
Canada Southern stock (\$15,000,000) at .89527....	13,429,050

---

Total .....	\$81,335,150
Michigan proportion, 68.562 per cent.....	55,765,005

This is nearly 25 per cent. above the 45 millions State Board assessment of 1902. A computation upon such a basis is certainly fair to appellant.

If the Canada Southern stock is taken at the 55 per cent. price (as stated by no one but Mr. Cox) which is less than 2-3 of its market value (and still leaving out the unfunded debt and the other stocks in the hands of the public) the computation would amount to upwards of 52 millions, as follows:

Market value of bonds.....	\$46,357,400
Michigan Central stock at 115.....	21,548,700
Canada Southern stock, \$15,000,000 at 55 cents....	8,250,000

---

Total .....	\$76,156,100
Michigan proportion (68.562 per cent.).....	52,214,145

The State Board assessment in question is but about 86 per cent. of this amount.

**b. The Method of Computation of Final Net Surplus.**

Prof. Johnson, the only witness for appellant, who attempted to make any computation of railroad values, made a computation upon the inventory method, supplemented by capitalization of final net surplus, known as the Adams Plan. As before stated, Prof. Johnson approved the plan in principle. By his computation the value of the Michigan portion of the system was reached at \$46,379,384 (R. p. 671) which is but slightly in excess of the State Board assessment of 1902.

His method of computation differed from that of Prof. Adams, **first**, in taking as the physical annuity rate **4½ per cent. plus** the average Michigan **taxation** rate; **second**, taking a **ten year** period for net earnings instead of five years; **third**, capitalizing the net surplus at **6 per cent. plus** the average Michigan **tax rate**; **fourth**, rejecting from physical values cash and current assets. (R. p. 674.) He recognized that a portion at least of the large amounts paid from operating expenses on account of betterments and additions were plainly not chargeable to operating expenses and thereby increased the net earnings to some extent. (R. p. 671.) He attempted to justify leaving the remaining items in operating expense, not upon the ground that their inclusion was necessary to keep up the road to its normal condition from year to year, but that in order to "keep abreast of technical development" in railway transportation it was necessary to increase the cost and value of equipment of all kinds. He admitted, however, that a large amount of the expenditures which he left in operating expenses increased not only the gross earnings, but the net earnings of the road, and that the effect of these additions and betterments in increasing net earnings would be permanent. (R. pp. 676-77.)

As otherwise stated by him, the method which he adopted resulted in distributing less per cent. profit to stockholders in order to strengthen future capacity and actual future net earnings of the property. He expressly admitted that the result of this system of increasing the cost and value of equipment for the purpose of "keeping abreast of technical development" had been (aside from panic years) a steady increase in net income from operation of railroads. (R. pp. 677-8.)

We submit that in each of the four respects in which Prof. Johnson's basis of computation differs from that of Prof. Adams, it is too favorable to appellant.

(1.) **The rate of capitalization.** It is shown beyond dispute that the net return to the investor in appellant's stock

and bonds during the period taken was not more than  $3\frac{1}{2}$  per cent. on bonds and 5 per cent. on stock. That the return which the investor is willing to accept furnishes a fair basis for capitalizing that which represents the bond value and stock value respectively, seems clear. These were the rates taken by Prof. Adams for a return upon physical and non-physical, respectively, the former being represented by the bonds (greatly less in amount than the physical value), the latter by the stock.

Prof. Johnson increases the average yield to bond and stock investors respectively by taking a ten year period instead of a five year period, as taken by Prof. Adams. He thus shows an average yield to investors in bonds for the entire ten year period, of 3.894 per cent., and upon stock of 4.02 per cent. Yet he took capitalization rates of  $4\frac{1}{2}$  per cent. and 6 per cent. (in addition to the Michigan tax rate), which we submit is extravagantly in excess of even the ten year period.

Prof. Johnson admits that he is not a specialist on railway finance or taxation, and that he has given no unusual amount of study to problems of finance, the stock market, and railway taxation. (R. p. 672.)

Mr. Woodlock, of the Wall Street Review, as a witness for appellant, gave his judgment of a proper capitalization rate as  $3\frac{1}{2}$  per cent. plus the taxes. (R. pp. 662, 663.)

The Department of Commerce and Labor has adopted the capitalization rate (on the net earnings basis) as determined by the market value of securities. (See letter of transmittal in Bulletin 21 of Department of Commerce and Labor before referred to.)

We submit that the rate of  $3\frac{1}{2}$  per cent. as adopted by both Prof. Adams and Editor Woodlock is fair and conservative, and that Prof. Johnson's rate of  $4\frac{1}{2}$  per cent. is radically excessive.

It is true that in making the Michigan Railway Appraisal of 1900 Prof. Adams used a slightly higher rate. The use of this higher rate is explained by the fact that in 1900 no attempt was made to get the entire value of the railroads. The object of the investigation was to get near enough that value to enable the Legislature to determine whether the railroads were paying the same rate of taxation as general property. The valuations were therefore made with great conservatism. In 1900 the entire value was not obtained. The effort was made to compute the value of property for 1902 as an assessor would. (R. p. 817.) Nor is there any force in the proposition that Prof. Adams made his 1902 rate a trifle smaller than he would have made it but for the fact of the inclusion in operating expenses of the large disbursements for additions and betterments. The fact remains that his computation has entirely failed to take into account the fact that the net earnings were decreased by the payment for additions and betterments from operating expenses, and nevertheless, the rate taken is no lower than that which the investor is shown to have been willing to accept.

(2.) **Adding the Tax to Interest Rate.** Complainant introduced testimony that a considerable part of the Michigan Central bonds are held by savings banks or other investors who, for one reason or another, escape taxation, and argue from this that the rate netted to the investor is not a fair measure of the public's valuation of the securities because one liable to taxation cannot afford to hold such low interest-bearing securities.

It is submitted that this argument is not entitled to weight. The same consideration is true as to the majority of low interest-bearing bonds issued by public service corporations of all kinds. Yet the bonds are worth every dollar they call for, for the same reason which exists in the case of the railroad bonds in question, namely, that there is an open



and free market for safe issues even at the low rates. That there was a free market for Michigan Central bonds at  $3\frac{1}{2}$  per cent. notwithstanding taxation, during the period in question, is expressly stated by Editor Woodlock of the Wall Street Review (R. p. 662.) Property is properly taxable on what it is worth in the market, even though all people would not care to buy it at the given price. Indeed, market value is the test of taxation value.

An attempt was made to show that some of the Michigan Central bonds were held by savings banks and others not taxable thereon, but the showing was limited to \$2,370,000 out of a total outstanding issue of over \$43,000,000. (R. p. 645.)

Appellant showed that the majority of the Michigan Central stock transferred during the year ending August 15, 1902, was transferred to brokers (R. pp. 644-49), but the transfers showed numerous sales to others than brokers, including Mr. Lisman, and including among the brokers Mr. Wildes and Messrs. Seligman & Co.

It clearly appears that the fact that railway securities are taxable in some jurisdictions, does not appreciably affect the market. Mr. Greene says, "The individuals do not figure the taxes." (R. p. 559.) Mr. Wildes says, "Holders of coupon bonds do not expect to pay the tax," although registered bonds are sold at a less price than coupon bonds on account of taxation. (R. p. 574.)

It would seem from the record that less than  $3\frac{1}{2}$  millions of the Michigan Central bonds are registered (R. p. 645) out of a total of over 37 millions of first mortgage bonds in the hands of the general public.

Mr. Lisman says that "as a rule bonds very seldom pay taxes" (R. p. 569.) Editor Woodlock says, "There is always a large class of investors to whom taxation presents no terrors. A great many non-residents of New York, I know from



my financial business, do not pay taxes on such bonds." (R. p. 661.)

In New York stocks are not taxed at all, while in several of the states the tax on stocks and bonds is at an almost insignificant rate. (R. p. 569.)

The whole objection seems to be covered by the statement of Mr. Woodlock, that "People who expected to be taxed on their incomes and could not escape by ordinary methods, would not buy that kind of bonds." (R. p. 660.)

But the undisputed fact remains that the liability to taxation has not interfered with the market on stocks and bonds of the high grade of appellant's.

The fact that the taxes for 1902 were not paid out of the earnings for that year, but out of the earnings for 1903 (Greene, R. p. 561; Johnson, R. p. 675) is evidence that the value of appellant's railroad properties in 1902 could not have been appreciably affected by the tax law in question.

Prof. Adams gives the following reasons, which seem to us conclusive, against the propriety of taking the tax paid by the investor into account:

He says, first, there is no evidence warranting the conclusion that the cash value of Michigan railroad properties as measured by the market quotations of securities was less on April 14, 1902, than it would have been had the *ad valorem* tax law in question not been passed; second, that Michigan contributed her full share to railway construction during 1902, thus showing that investors in Michigan railway properties were not affected by fear of increased taxation, there being no evidence of a depressing influence on account of the tax law in question, an assessment should not anticipate results that may not (and indeed probably will not) be effected in the future; third, to reduce the values of railway properties to an amount obtained by adding the increased tax rate to an interest capitalization rate, would be to treat railway properties dif-

ferently from the manner in which general property is assessed, for the local assessor does not decrease values of general property until increased taxation has actually decreased the value,—one of the purposes of an annual appraisal is to make assessments conform to changing commercial conditions; fourth, the method of valuation upon the plan of inventory, represented by capitalization of final net surplus producing the non-physical value, makes no allowance for speculative or anticipated values, and thus should not be burdened with anticipated deductions in value; fifth, experience shows that increased expenses of any kind are usually met by efforts either to raise the price of the service or to economize the cost in other directions; and that in view of the history of railway development no one can safely say how an increased tax will show itself in the economies of railway administration; sixth, that as the tax law in question does not burden railroad property more greatly than general taxes burden general property, there is no inducement for investors in the former class of properties to sell their investments at reduced price. The correct comparison lies between an investment in railway property after an increased tax, and an investment in other form of property. Michigan railroads having paid less taxes per mile of line than were paid by railways of adjacent states, and in general less than those of the United States, previous to 1901, an increased tax would not exert any considerable influence on the property's valuation.

We submit that there is no reasonable basis for adding to the capitalization rate the tax paid by any investor. Surely the Michigan rate of taxation could not be so taken into account unless the holders of the securities paid the Michigan rate. There is no evidence that any considerable portion (if any at all) of appellant's bonds are generally held in Michigan. The affirmative evidence is that practically the entire

of appellant's stocks are held in New York, where they are not taxable at all.

(3.) **The period over which an average for net earnings should be taken.**

Prof. Johnson took a ten year period. This long period was evidently taken in order to embrace the full five panic years from 1893 to 1898. The five year period from 1897 to 1902 taken by Prof. Adams includes two of the panic years. Prof. Johnson admits that he has no personal experience and can cite no precedent for taking a ten year period, and that his adoption of that period is purely theoretical. (R. p. 674.) Appellant produced no other witness on the subject whose testimony is entitled to great weight. Mr. Russell, Mr. Hance, Mr. Newberry and Mr. Walbridge, who are all, or nearly all, business associates of the general attorney and president of the appellant railroad (R. pp. 691, 694), in giving their views of a proper capitalization rate on the net earnings method, state that they think a ten year period for reaching the average rate for such purpose is proper (Mr. Walbridge giving his opinion at 20 years.) They admit that they have had no experience with railway finance, or railway earnings capitalization. (R. pp. 692, 695.) Mr. Newberry expressly says that he takes the ten year period for the very purpose of covering five full panic years. (R. p. 697.)

On the other hand, Mr. Greene says that his experience has shown that "five years previous to 1902 would be a fair average for ascertaining the intangible value of Michigan railroads." (R. p. 554.)

Prof. Adams says, "I came to the conclusion that less than five years was the practice among business men." (R. p. 510.)

Prof. Adams significantly says: "The error in taking a ten year period, including the lean years in the past, and practically taking out of the earnings of five previous years

enough to enable the road to recoup itself for what it might have lost, and in addition to that, to take out of the current earnings an amount to provide against lean years in the future, in reality burdens the five years' prosperous period with two lean periods, and practically, so far as the result is concerned, would be taking a fifteen year period. If each decade has lean and fat periods the fat had ought to be burdened with only one lean period." (R. p. 804.)

As before mentioned, the Department of Commerce and Labor in making its commercial valuation of railway operating properties for 1904, adopted a period of five years previous to June 30th of that year, for obtaining the average net earnings to be capitalized. (Bulletin No. 21, Dept. of Commerce and Labor, p. 20.)

A period of five years previous to, and including 1902, is even more favorable to the appellant railroad, as that period included a portion of the panic period.

There is manifestly no reason for taking the earnings of more than one year provided those earnings were absolutely stable. It is only for the purpose of ascertaining a stable earning that more than one year is inquired into. The tables of Michigan Central earnings, both gross and net, show their remarkable stability. The reports also show that although prosperity is occasionally interrupted by a panic period, a given number of years succeeding the panic show greater prosperity than the same number preceding. In other words, railroad prosperity progressively increases, and thus a period of five successive years at any time produces a fair average. This progressive increase (and thus the comparatively slight difference resulting from the taking of a five or ten year period) appears by the table presented by Prof. Johnson on page 671 of the record.

In the following cases a capitalization of the net earnings of one year was approved:

State vs. Nev. Central R. R. Co., 69 Pac. 294.

Louisville Ry. Co. vs. Commonwealth, 49 S. W.  
486.

We submit that a five year period is eminently fair toward appellant.

(4.) **Keeping abreast of technical development.** To overcome in part the effect of the showing that the apparent net earnings of the Michigan Central Railroad had been decreased by the practice of charging betterments and additions to operating expense, appellant introduced testimony designed to show that some of these betterment and addition charges were properly payable as operating expenses. This testimony is material as respects the computation made by Prof. Adams only so far as it affects the question of what is a proper capitalization rate, because Prof. Adams took the net earnings as **actually reported by appellant** after paying from operating expenses the additions and betterments referred to. The only materiality such testimony otherwise has (apart from the general effect upon the dividend earning capacity of the road) relates to the computation by Prof. Johnson (appellant's expert witness) who attempted to correct and increase the net earnings as reported, by rejecting from operating expense a portion of the betterments and additions.

Prof. Johnson, as the result of the corrections made, shows the average net earnings over a ten year period, of the Michigan portion of the system, before the payment of taxes, \$2,923,856.98 (R. p. 671). The average annual net earnings of the Michigan portion of the system, over the five year period from 1898 to 1902 inclusive, before the payment of taxes, would be \$3,056,706.14. The testimony of Prof. Johnson and of Messrs. Woodlock, Cox and Marwick is designed to support the general conclusion referred to.

We submit that if appellant's actual net earnings are to be considered, all the sums before referred to in this brief

as reported by the Michigan Central Railroad Co. as paid from operating expense on account of betterments and additions, should be rejected from that account. The reasons given for leaving a portion of such items in operating expense are not satisfactory. They are based upon the proposition that the road should be permitted to accumulate a surplus. Thus, Prof. Johnson says: "The result of the system followed by the Michigan Central in that regard is to give a better and more economical service; the earning capacity of the Michigan Central is favorably affected by betterments which have been included in operating expenses and the economies resulting therefrom; during the last five years it has been on the up grade. Its increased prosperity and earnings are due in a large part to improvements which have been paid for out of operating expenses. You add to value of the property in fat seasons, creating a surplus, as a bank does out of its earnings in good times. Every railroad has to prepare for periods of depression." (R. p. 677.)

And again: "While both the train load and the earnings have been favorably affected during the last few years because of the large volume of traffic, they are none the less due to improvements in track, equipment and management, whose influence on earnings will be permanent. \* \* \* I have found it to be a fact for a number of years past that profits to stockholders have been restricted in order to strengthen future earning capacity and earning of the property." (R. p. 677.)

And again: "The result, aside from the panic years, has been a steady increase in the net income from operation." (R. p. 678 and Table.)

Treasurer Cox says of the appellant railroad: "It has been increasing the net earnings notwithstanding the practice of charging to operating expenses the class of betterments mentioned, and has had a steady increase in growth." (R. p. 658.)

It is, we submit, clearly shown that the betterments and additions referred to have no place in an operating expense account. It appears by the record that the Michigan Central road uses the Interstate Commerce Commission's classification of expenses. (Auditor Burt's Test., R. p. 492.)

Prof. Adams says, speaking of this classification: "The word 'depreciation' does not occur in railway reports to the Interstate Commerce Commission. It is covered by the phrase 'renewals and repairs' in the official classification. I know of no better source or guide for determining theoretically depreciation or cause of renewals, than the Interstate Commerce Commission's statistics." (R. p. 807.)

And again: "The object of a depreciation account is to collect a fund during the life of a given piece of property so that when it is worn out, either the original cost, or a new bit of property can be restored to the investor, and any adjustment of accounts or theory of expenditure by means of which that is done may be said to include in it a provision for depreciation." (R. p. 806.)

And again, speaking of Prof. Johnson's attempted correction of net earnings: "I understand the general result to be that the schedule of betterments is an amount which was put into betterments after taking care of depreciation and renewals which naturally come in the operating expense account." (R. p. 806.)

And again: "Adding improvements to keep the property abreast of technical development results in burdening the earnings of that year with expenses more or less permanent in character, which does not seem to be in harmony with the true definition of net income. \* \* \* It would be difficult to find any of these improvements known as technical development, which do not result either directly or indirectly, in financial advantage and increased return." (R. p. 803.)



As before shown in this brief (p. 108) it appears by the undisputed testimony that the operating expense of the Michigan Central Railroad during a full ten year period, including 1902, after taking out the items of betterments and additions contained in Auditor's clerk Comstock's schedules, was still several per cent. higher than the average operating expense of railroads in the United States, and substantially larger than the average of the Michigan group of railroads. (Prof. Cooley's Table, R. p. 819.)

Mr. Marwick attempted to show that without including in operating expense a part of the betterment and addition items, the road could not have been maintained to proper efficiency. He attempted to justify this statement by saying that the Michigan Central expenditures from operating expense (aside from additions and betterments) on account of engines, freight cars and passenger cars, was inadequate as shown by railway experience. (R. p. 652.)

The record contains a series of tables compiled by Engineer Hinchman from the Interstate Commerce Commission's statistics, showing the cost of maintaining the three kinds of equipment mentioned as compared with the Michigan Central's expense therefor as reported to the Railway Commissioner, and showing the following results:

	Hinchman's Table Average U. S. for 10 years.	Marwick's Figures M. C. average 10 years.
Locomotives .....	\$14.09	\$15.41
Passenger cars.....	5.38	5.18
Freight cars.....	44.60	62.30

(R. pp. 652, 822-824.)

It thus appears that the Michigan Central average payments for locomotives and freight cars is largely in excess of the average for the United States, the passenger cars alone being smaller than the average. As there were 12 to 13 thou-



sand freight cars purchased per year as compared with 3 or 4 hundred passenger cars, the Michigan Central average payment on account of all classes of equipment is very much larger than the average in the United States.

This evidence, we submit, thoroughly overcomes the theoretical proposition of Mr. Marwick (in which he is not supported by the definite testimony of any officer or employee of the Michigan Central Railroad) that the road could not have been properly kept up to a normal standard without the betterments and additions referred to.

As a matter of financial management, no criticism is intended upon the justice or propriety of paying for improvements out of current earnings before paying dividends. But when such payments increase the value and the net earning capacity of the property so improved, such increase is subject to taxation, whether the cost thereof is charged to operating expense or to an improvement account.

We submit that Prof. Adams' computation of the value of the appellant railroad properties which took the average net earnings over a five year period as **actually reported** by the Michigan Central Railroad, after the payment of **taxes actually paid** by that road, using capitalization rates of  $3\frac{1}{2}$  per cent. and 5 per cent. respectively (by which the value of \$63,890,211 was shown) is conservative.

If, however, the average net earnings over a five year period, namely: \$3,056,706.14, are taken, and rates of 4 per cent. and 5 per cent. respectively adopted,—which are higher than the rates of 3.89 per cent. and 4.02 per cent. found by Prof. Johnson to be the average rates of return to investors in the stock and bonds respectively, of the Michigan Central, **over a ten year period**,—the result would be a valuation of \$52,000,979, of which the State Board 45 million dollar assessment is but 85 per cent. This computation would be as follows:

Average net earnings before payment of taxes. . \$ 3,056,706 14  
 5.65 per cent. (4 per cent. interest plus 1.65 per.  
 cent. taxes) \$46,111,011 physical valuation. . . . 2,605,272 21

---

Net remainder for capitalization. . . . . \$ 451,433 93  
 Capitalizing net remainder at 6.65 per cent. (5  
 per cent. interest plus 1.65 per cent. taxes) . . . 6,789,968 87  
 Physical valuation . . . . . 46,111,011 00

---

Total valuation Michigan portion. . . . . \$52,900,979 87

If a ten year period for net earnings were taken and the capitalization rates adopted at 4 per cent. plus the Michigan tax rate for 1902, and at 5 per cent. plus the tax, the entire betterments and additions referred to being deducted from the expense account, the value of appellant's railroad properties would be over \$59,000,000, the assessed valuation being but 76 per cent. of this amount.

Even if Prof. Johnson's extreme capitalization rates were adopted (4½ per cent. and 6 per cent. plus taxes) including his ten year period of net earnings, the betterments and additions being taken from operating expense as they should be, the value of appellant's railroad properties would be more than 51 millions, of which the assessed valuation is but 87 per cent.

The **Grosscup Rule** is not a reliable authority for capitalizing a steam road like the Michigan Central at the high market rate of 6 per cent. plus taxes. Both Mr. Greene and Prof. Adams have pointed out the difference between the case of the Union Traction Co. and a steam road like the Michigan Central. (R. pp. 562, 500.)

c. **The Net Earnings Method.** The testimony of Messrs. Russell, Hance, Newberry and Walbridge that rates varying in the judgments of the respective witnesses from 6 per cent. to 10 per cent. should be used for capitalizing the net earnings

of a railroad, after taxes had been deducted from such net earnings, is, we submit, entirely too radical.

None of these witnesses has had any experience whatever with financing railroads, except as Messrs. Hance and Newberry were connected with the underwriting of the bonds of a logging road fifty miles long in the upper peninsula of Michigan so heavily bonded (as the timber is cut off) that a sinking fund had to be provided to meet the bonds (R. pp. 694, 696), and except as Mr. Newberry also took part in the underwriting of another railroad so heavily bonded that all there was of saleable value was the bonds (a sinking fund being required for this also), upon which it defaulted, resulting in a foreclosure of the mortgage. (R. p. 696.)

We submit that these experiences furnish no criterion for determining the capitalization value of a prosperous road of the highest class, with not simply stable but constantly increasing net returns.

Mr. Russell as a banker admits that a railroad stock yielding 4 per cent. dividends is easily as good as a 4 per cent. bank stock for purposes of collateral; that a railroad stock could even earn 4 per cent. less than bank stock and still be worth par; that the net return to the investor in Michigan Central bonds for 1901 and 1902 was only about  $3\frac{1}{2}$  per cent., yet he as a banker bought bonds at that rate in both those years as investments for his bank. (R. pp. 691-3.)

Mr. Hance as trust officer of a Detroit trust company, bought Michigan Central  $3\frac{1}{2}$ 's in 1902 at par, and admits that Detroit bank stocks which Mr. Russell says at a given earning rate are worth less than first class railroad stocks, are sold at prices which net the investor only about 3 per cent. above taxation. (R. pp. 694-5.)

We submit that this testimony as to the high rate demanded for capitalization of net earnings of a prosperous railroad cannot be seriously considered.

We submit that the capitalization rate of 4 per cent., being more than the amount netted to the investor in Michigan Central bonds and stocks over even a period of ten years is, in the case of this road, a safe capitalization rate.

If, however, the entire earnings should be taken for a ten year period after the payment of taxes, and correcting the earnings by the betterments and additions referred to, the value of the Michigan portion of appellant's railroad property would be about 60 millions, as follows:

Net earnings for 10 year period as reported by

appellant before taxes paid (R. p. 671).....	\$10,004,099 00
Taxes paid (R. p. 819).....	3,999,980 00
Net earnings after taxes paid.....	36,004,119 00
Betterments during ten year period (R. p. 819)	7,788,847 00
Total corrected net earnings after taxes paid, for	
ten year period.....	43,792,966 00
Average for one year.....	4,379,296 60
Michigan proportion (68.562 per cent.).....	3,002,533 00

This, capitalized at 5 per cent., yields approximately 60 millions.

If a five year period for average earnings is taken, the capitalization is somewhat higher.

It is not without interest to note that the Department of Commerce and Labor fixed 4.09 per cent. as the capitalization rate for the Michigan Central Railroad Company in 1904. (Bulletin No. 21, p. 38). A capitalization at this rate of merely the \$2,503,345 average earnings for the five year period, as actually reported by the Michigan Central Railroad Company after the payment for betterments and additions referred to, would amount to more than \$60,000,000.

We submit it clearly appears from the foregoing discussion, first, that the appellant has failed in its contention that the general properties of the state were substantially undervalued in the 1902 assessment; and second, that appellant's

railroad properties were under-valued in the 1902 railroad assessment to fully as great an extent as the claimed under-valuation of general properties.

We respectfully ask that the decree of the Circuit Court as to appellant, Michigan Central R. R. Co., be affirmed.

## THE RAILROADS OTHER THAN THE MICHIGAN CENTRAL.

(Nos. 461-487, inclusive.)

The list of the titles of these cases is given in Mr. Wykes' brief at pages 11-12.

In the case of none of these roads does the defendant claim any fraudulent under-valuation.

As to the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, the Copper Range, the Escanaba & Lake Superior, the Gogebic & Montreal River, the Lake Superior & Ishpeming, the Lake Shore System, the Marquette & South-eastern, the Mineral Range System and the Munising Railroad, Prof. Adams did not disturb the valuations adopted by the State Board of Assessors. The reasons for not departing from such State Board valuations are various. (R. pp. 542-551.) In the case of the Grand Trunk group Prof. Adams' valuation was slightly less than the State Board assessment. (Table "739a" following p. 554 of the Record.)

Actual under-valuation in the 1902 State Board assessment is thus claimed as to the following roads,—in addition to the Michigan Central and to the Pere Marquette (which has not appealed)—viz., Ann Arbor, Detroit & Mackinaw, Duluth, South Shore & Atlantic, Grand Rapids & Indiana System, Manistee & Northeastern, Minneapolis, St. Paul & Sault Ste. Marie, Pontiac, Oxford & Northern, and Sault Ste. Marie Bridge Company.

Proof of such under-valuation is confined to the Cooley and Adams appraisal, both physical and non-physical, for 1902, except so far as corroborating evidence may be found by comparison with the 1900 Michigan Railway appraisal. (Table "739a," following page 544 of the Record.)

The record does not show the amount of net earnings, nor the stock and bond values in the case of either of these roads, but does show, first, the Cooley physical appraisal of 1902; second, the rates adopted by Prof. Adams for the 1902 valuation—both for annuity on physical values and for the capitalization of the final net surplus—and, third, the total value—physical and non-physical—as found by Prof. Adams.

The following table shows the data referred to in the case of each of the roads affected by this branch of the discussion:

	1903	1902	1902	1902
	State Board	Cooley	Adams'	Value as
	Assessment.	Physical	Capitalisation Rates.	Given by
		Appraisal.		Adams.
Ann Arbor System....	\$ 7,582,000	\$ 7,548,315	4.25 and 6 per cent.	\$ 7,640,282
Detroit & Mackinaw..	4,100,000	4,113,347	4.5 and 6 per cent.	4,348,247
D., E. S. & A.....	12,500,000	9,553,688	5 and 7 per cent.	12,606,588
G. R. & I.....	11,500,000	11,798,732	4.5 and 6 per cent.	12,670,615
M. & N. E.....	1,500,000	1,423,125	5 and 8 per cent.	1,714,900
M., St P. & S. S. M..	5,100,000	5,017,253	4.5 and 6 per cent.	7,960,286
P. O. & N.....	1,000,000	1,126,089	6 and 7 per cent.	1,438,046
S. S. M. Bridge Co....	400,000	329,178	4 and 4 per cent.	830,285

If general property under-valuation shall be found established, we respectfully submit that the valuations of the railway properties of the roads above referred to should be accepted as found by Prof. Adams.

We submit that the decree of the Circuit Court should be affirmed as to all of the appellants.

JOHN E. BIRD, Attorney General,  
Solicitor for Defendant.

CHARLES A. BLAIR,  
ROGER IRVING WYKES,  
CHARLES E. TOWNSEND,  
LOYAL E. KNAPPEN,  
Of Counsel.

# TABLE OF CASES.

	Brief Page.
Adams Exp. Co. v. Ohio (165 U. S., 194).....	12, 112
Adams Exp. Co. v. Ohio (166 U. S., 185).....	12, 112, 113
Alexander v. Thomas (70 Miss., 517).....	10, 75, 78, 83
American Exp. Co. v. Indiana (165 U. S., 255).....	12, 112
American Exp. Co. v. Indiana (166 U. S., 185).....	11, 112, 113
Auditor General v. Imp. Co. (129 Mich., 189).....	15
Auditor General v. Prescott (94 Mich., 190).....	15
Bank v. Miller (19 Fed., 372).....	10, 75, 83, 84
Bank v. Perea (147 U. S., 87).....	5, 15, 17
Bd. of Education v. Assessors (133 Mich., 116).....	28, 52
Bd. of Equalization v. People (191 Ill., 528).....	13, 126
Bridge Co. v. Kentucky (166 U. S., 150).....	13
Bureau Co. v. R. R. Co. (44 Ill., 229).....	10, 74, 83, 84
Canfield v. Bayfield Co. (74 Wis., 60).....	11, 85
Chicago U. T. Co. v. Bd. of Equalization (112 Fed., 607) .....	13, 74, 126, 152
Chicago U. T. Co. v. Bd. of Equalization (114 Fed., 557) .....	10, 83, 122
Citizens St. Ry. Co. v. Com. Council (125 Mich., 682).... .....	13, 115, 116
Colorado Ry. Co. v. Wright (151 U. S., 470).....	13, 123
Coulter v. R. Co. (25 S. Ct. R., 342)..... .....	5, 10, 15, 17, 75, 80, 83, 84, 90
Cummings v. Natl. Bank (101 U. S., 153).....	5, 10, 14, 18, 71, 83, 84
Delaware R. R. Tax Cases (18 Wall., 208).....	132
Detroit Cit. St. Ry. Co. v. Com. Council (125 Mich., 681) .....	12, 115, 116, 117
Dundee Mtg. Co. v. Parrish (24 Fed., 197).....	16
Ex parte Bridge Co. (62 Ark., 461).....	10, 75, 83



	Brief Page.
Express Co. v. Indiana (165 U. S., 255).....	10, 113
Express Co. v. Indiana (166 U. S., 185).....	10, 110, 113
Express Co. v. Ohio (165 U. S., 194).....	11
Express Co. v. Ohio (166 U. S., 185).....	11
First Natl. Bank v. Lucas Co. (25 Fed., 749).....	10, 72, 83, 84
Henderson Bridge Co. v. Kentucky (166 U. S., 150).....	125
Keokuk Bridge Co. v. Illinois (161 Ill., 514).....	10, 75, 77, 83, 84
Lowell v. County Commrs. (3 Allen, 549).....	90
Louisville R. Co. v. Commonwealth (49 S. W., 486).....	10, 73, 79, 84, 147
Louisville Trust Co. v. Stone (107 Fed., 305).....	10, 75, 77, 83
Maine v. G. T. Ry. Co. (142 U. S., 217).....	12, 112, 113
Merrill v. Humphrey (24 Mich., 170).....	15
Minnesota v. Thayer (69 Minn., 170).....	11, 87
Missouri v. W. U. Tel. Co. (165 Mo., 502).....	10, 75, 79, 84
Moas v. Cummings (44 Mich., 361).....	11, 86
Muskegon v. Boyce (123 Mich., 540).....	11, 86, 90
Natl. Bank v. Hubbard (98 Fed., 465).....	11, 86
Natl. Bank v. Kimball (103 U. S., 735).....	5, 14
Natl. Bank v. Lucas Co. (25 Fed., 749).....	9, 72, 83, 84
Nebraska v. Savage (91 N. W., 717).....	13, 126
N. O. Ry. Co. v. New Orleans (143 U. S., 192).....	12, 112
N. Y. v. Barker (179 U. S., 279).....	5, 15, 16, 18
Pelton v. Natl. Bank (101 U. S., 143).....	10, 71, 83, 84
People v. Assessors (2 N. Y. S., 240).....	13, 122, 123
People v. Hicks (40 Hun., 598).....	13, 122
People v. Kalbfleish (49 N. Y. S., 546).....	13, 122
People v. Reid (64 Hun., 553).....	13, 122
People v. Van Nostrand (24 N. Y. S., 513).....	11, 87
Porter v. R. R. Co. (76 Ill., 516).....	13, 126
Pullman Co. v. Pennsylvania (141 U. S., 18).....	12, 112, 113
R. R. Co. v. Commrs. (54 Kas., 781).....	10, 74, 83, 84
Ry. Co. v. Backus (154 U. S., 424).....	13, 123, 125
Ry. Co. v. Coulter (131 Fed., 282).....	10, 83, 89, 122, 123

	Brief Page.
Ry. Co. v. Hewes (183 U. S., 66).....	12, 112
Ry. Co. v. Pennsylvania (21 Wall., 492).....	132
Ry. Co. v. Wright (151 U. S., 470).....	12
Ry. Co. v. N. Carolina (104 Fed., 700).....	10, 84, 90
R. R. & Tel. Co. v. Bd. of Equalization (85 Fed., 302).....	10, 84, 90, 122
Randall v. Bridgeport (63 Conn., 321).....	10, 75, 83, 84
Sanford v. Poe (69 Fed., 546).....	13, 126
Solomon v. Oscoda Tp. (77 Mich., 365).....	15, 74
So. Ry. Co. v. N. Carolina (104 Fed., 700).....	10, 84, 90
Stanley v. Supervisors (121 U. S., 548).....	5, 15, 17
State v. Nev. Central R. Co. (69 Pac., 294).....	147
State R. R. Tax Cases (92 U. S., 612).....	5, 14, 15, 112, 113, 125, 132
Supervisors v. Stanley (105 U. S., 305).....	5, 14
Tax Commissioners v. Assessors (124 Mich., 491).....	21
Tax Commissioners v. Quinn (125 Mich., 128).....	21, 51
Taylor v. Ry. Co. (31 C. C. A., 537).....	10, 13, 72, 83, 84, 122, 123, 126
Taylor v. Secor (92 U. S., 575).....	12, 112
Wagoner v. Loomis (37 O. St., 571).....	10, 75, 78, 83, 84, 86, 87
Walsh v. King (74 Mich., 350).....	15, 74
W. U. Tel. Co. v. Taggart (163 U. S., 1).....	13, 113, 125
Williams v. Mears (61 Mich., 87).....	11, 85

**INDEX TO TRANSCRIPT OF RECORD.**  
(So far as pertaining to subjects treated in this brief.)

I.

**UNDER-VALUATION OF GENERAL PROPERTIES.**

	Record Page.
Certificate that all objections to testimony were made before question answered unless otherwise stated.....	62
Motion to strike out all evidence of under-valuation....	281
Pingree, Governor—1900 Message.....	235
<b>1901 Equalization.</b>	
Ex. F. Proceedings State Board Equalization.....	281
Statement of Chas. A. Blair.....	281
Letter Sec'y B'd of Equalization to Atty. General, Aug. 23, 1901.....	282
Letter Atty. General to Secretary B'd of Equaliza- tion, Sept. 4, 1901.....	283
Letter Auditor General to Atty. General, Aug. 25, 1901 .....	287
Letter Attorney General to Auditor General, Sept. 10, 1901.....	287
Communication from State Tax Com. to State Board Equalization .....	288
Table of Assessed and Equalized Valuations of prop- erty by counties, as made by Boards of Supervisors, June, 1901.....	333
Table showing the percentage which the assessment of property bears to actual value, according to	

estimate of field examiners, included in Report of Tax Commissioners to State Board of Equalization	295
Table showing valuation of general property as equalized in 1901 by State Board of Equalization, compared with Supervisors' assessments and Tax Commissioners' estimates for that year, and equalization of State Board for 1896.....	334
Action of State Tax Commission before State Board of Equalization, and protests of representatives of various counties against assessments.....	288
Admission that there is no evidence that the Board of Equalization attempted to determine actual values	288
Report of State Board of Equalization for 1901.....	483
Motion to strike Exhibit F from record.....	489
Comparative table of Tax Commission's recommendations to State Board of Equalization and water assessments in certain counties as reviewed and corrected by Tax Commissioners .....	78
Exhibit C, Report of State Board of Tax Commissioners and State Board of Assessors for 1901 and 1902.....	337
Act No. 154 of P. A. Mich. 1899 (Tax Commission Act) .....	337
Statistical table No. 1 (Assessed valuation of real property of state, by counties, for 1886, 1899 and 1902) .....	351
Statistical table No. 2 (Assessed valuation personal property of state, by counties, for 1886, 1899 and 1902) .....	353
Extract from Com'nr Freeman's paper before State Grange in 1902, printed with report of State Tax Commissioners and State Board of Assessors.....	348
Comparative statement, by counties, of valuation of real and personal property of state, as assessed, reviewed and equalized for 1899 to 1902, inclusive....	355

**Witnesses.**

**For Complainant:**

Bibbins, Samuel S. (Field Examiner).....	152
Comparative Table Assessed and Estimated Values of Calhoun and part of Oakland Counties for 1902..	154
Bolt, T. J. G. (Field Examiner).....	187
Comparative Tables of Assessed and Estimated Values of Montcalm and Shiawassee Counties for 1902 .....	189, 192
Burtlass, B. F. (Computing Clerk).....	236
Davidson, W. G. (Field Examiner).....	220
Comparative Table Assessed and Estimated Values of part of Clinton County for 1902.....	222
Dust, Wm. T. (Tax Commissioner).....	69
Freeman, A. F. (Tax Commissioner).....	106, 121
Gullifer, F. O. (Secretary Tax Commission).....	114
Table of Comparative Assessed Valuations for 1902 and 1903 .....	119
McLaughlin, Wm. C. (Tax Commissioner).....	81
Rolph, A. H. (Field Examiner).....	160
Comparative Table of Assessed and Estimated Values of Delta County for 1902.....	161
Sayre, Ira T. (Tax Commissioner).....	145
Stone, Herbert E. (Field Examiner).....	214
Comparative Tables Assessed and Estimated Values of Calhoun and Oakland Counties for 1902.....	215
Twiss, Fred M. (Cl'k Board State Tax Commission)	59, 219

**For Defendant:**

Williams, G. L. (Steno. S't B'd Tax Com'nrs.).....	470
--	-----

Finding of District Judge that no general or intentional  
under-valuation of general properties is shown.....850-4

II.

UNDER-VALUATION OF RAILROAD PROPERTIES.

**For Defendant:**

Official Appraisal of Mortimer E. Cooley and others, of all Railroads within the State for 1900 and 1902, with complainant's admission regarding the same, and the results thereof.....	489
Table showing the results of such appraisements....	490
Right of Way Maps.....	467
Extract from Certificate to State Board of Assessors R. R. Assessment Roll for 1902, showing the method of re-determining the average rate.....	482
State Board of Assessors' R. R. Assessment Roll for 1902 .....	477
1903 Railroad Assessment Roll.....	641

**Witnesses.**

Adams, Henry C. (Non-physical Valuation).....	494
Table of Market Quotations of Bonds of M. C. and other railroads, showing net return to investor, from 1899 to 1902, inclusive.....	502-4
Income Account, classification adopted by Inter-state Commerce Commission and M. C. R. R.....	506
Table showing Ratio of Operating Expense to Oper- ating Earnings of Railways in U. S. from the Re- ports of Interstate Commerce Com. from 1890 to 1902, inclusive.....	508
Comparison between M. C. and P. M. earnings for 1900 and 1901.....	509
Figures showing gross income of Michigan R. R.'s from 1898 to 1902, inclusive.....	510
Statement of average net earnings of M. C. R. R. for 1898 to 1902, inclusive, compared with earnings for 1902 alone.....	510, 511

Diagram showing gross Railroad Earnings per 100 sq. mi. in Michigan and per 10,000 pop. from 1883 to 1902, inclusive.....	Bet. 510 and 511
Diagram showing gross Railroad Income for Michigan as a whole and per mile as a whole, from 1883 to 1902, inclusive.....	Bet. 510 and 511
Computation of value of Mich. portion of M. C. System on basis of capitalization of final net surplus .....	512, 544
Butterfield's computation on basis of "Stable Income," stable tax rate and stable physical value.....	523
Computation of value of M. C. R. R. on Bower's theory .....	536
Comparison of Cooley and Adams appraisals of 1900 and 1902 with the assessments of State B'd of Assessors of 1902 and 1903 for all roads in litigation (739a) .....	544-5
Table of capitalization rates used by Prof. Adams....	549
Burt, A. J. (M. C. Auditor) Manner of assigning earnings and operating expenses, and Classification.....	491
Dust, W. T. (Commissioner) Opinion of Values and how valuation arrived at.....	437
Attitude and Conduct of Com'nrs Freeman and Sayre .....	440 and ff.
Green, Thomas L. (Non-physical valuations).....	531
Table showing net returns to investors in stocks of several railroads .....	555
Lisman, Frederick J. (Value M. C. Stocks and Bonds) .....	564
Table showing value of M. C. Stocks and Bonds April 14, '02, and net interest returns to investors.....	565
McLaughlin, Jas. C. (Commissioner) Opinion of values and how valuations arrived at by State Board of Assessors .....	431
Attitude of Commissioners Freeman and Sayre.....	433

Thompson, Melville W. (Stock and Bond Valuation)	587
Table showing amounts of sales and market values of M. C. stocks and bonds, and computation of value of Michigan portion of system (831a) . . . . .	Bet. 596 and 597
Table showing volumes of sales and prices of M. C. stocks from Oct., 1901, to Aug., 1902 . . . . .	603, 604
Table showing 1900 market quotations for M. C. stock by months . . . . .	605
Table showing M. C. and P. M. cash and supplies on hand and apportionment thereof Apr. 30, 1902 . . . . .	612
Walker, James (Consulting Engineer to S. B. A.) . . . . .	612
How 1902 valuations arrived at . . . . .	613, 636-7, 639
Attitude and conduct of Commissioners Freeman and Sayre . . . . .	638-9
Table of M. C. traffic statistics from Reports to Michigan R. R. Commissioner, from 1896 to 1901, inclusive . . . . .	616
Analyses of M. C. comparative traffic statistics, 1896 to 1901, inclusive . . . . .	622-30
Charts showing relation of operating expenses to gross earnings for Michigan Central lines, from 1882 to 1902, inclusive . . . . .	630-1
Statement showing Michigan Central gross earnings, operating expenses, net earnings and taxes, for entire system, from 1890 to 1902, inclusive . . . . .	631
Statement showing Michigan Cen. Gross earnings, operating expenses, net earnings and taxes, for Michigan portion of system, from 1890 to 1902, inclusive . . . . .	632
Computation of taxes paid by railroads (including Mich. Central) on local real estate . . . . .	636
Walker's valuation of M. C. R. R. based on 5.65 per cent. capitalization rate . . . . .	634-5



State Board of Assessors' "Official Preliminary List"	
of railroad values for 1902.....	637
Wildes, Clarence H. (Value M. C. Stocks).....	572
<b>For Complainant:</b>	
Andrews, Constant A. (New York Savings Banks exemption from taxation on R. R. bonds).....	654
Comstock, Geo. E. (M. C. betterments and additions)..	678
Statement of additions to M. C. equipment charged to operating expense, from 1883 to 1893.....	684
Recapitulation (by 6 months periods) of statements of betterments paid for by M. C. R. R. from operating expenses, from 1893 to 1902, inclusive.....	680
Statement of additions to Canada Southern equipment charged to operating expense, from 1883 to 1893 .....	689
Recapitulation (by 6 months periods) of statements of betterments paid for by Canada Southern Ry. Co. from operating expense from 1893 to 1902.....	685
Cox, Charles F. (M. C. stock values).....	654
Table showing high and low price of Michigan Central collateral trust bonds for 1901 and 1902.....	655
Table showing high and low prices of Michigan Central stock sales, 1901 and 1902.....	656
Hance, Elwood T. (Capitalization rates).....	693
Johnson, Emory R. (M. C. valuation).....	667
Table showing net earnings of M. C. R. R. before payment of taxes (as shown by Co.'s books) with witness' opinion of amount of betterments paid from operating expenses and net earnings corrected accordingly .....	671
Table showing net income per mile of R. R. line operated, from 1891 to 1901.....	678
Marwick, James (Value M. C. Stock and Capitalization rates) .....	649

Statement showing prices at which various railroad stocks were sold in 1902, and net returns to in- vestor .....	650-1
Table showing net earnings M. C. R. R. per cent. of operating expense, including taxes and amount paid from operating expense for permanent im- provements, from 1898 to 1902—(From M. C.'s Report to Stockholders).....	651
Newberry, Truman H. (Capitalization rates).....	695
Russell, Geo. H. (Capitalization rates).....	690
Snelling, Harry C. (Transfers of M. C. Stock).....	644
Table of sales of M. C. stock, showing dates, names of purchasers, and amounts sold.....	645
Walbridge, Henry D. (Capitalization rates).....	698
Woodlock, Thomas F. (Value M. C. Stock and Cap- italization Rates) .....	659
Table showing amounts of M. C. Stock acquired by N. Y. Central R. R. at 115 on collateral trust bonds from 1898 to 1901.....	661
Table showing high and low prices on sales of stock of N. Y. C., Ill. Central, C. & N. W., Pennsylvania, Ann Arbor, Del. & Hud., and C. M. & St. Paul Railroads from 1899 to 1902.....	664-7

#### **Defendant's Rebuttal:**

Adams, Henry C.....	801
Table showing percentage earned by M. C. R. R. and Can. So. Ry. respectively, on capital stock, in addition to dividends and surplus reported by Co.'s on basis of Prof. Johnson's correction of net earn- ings, from 1898 to 1902 inclusive.....	805
Cooley, Mortimer E.....	818
Table showing Ratio of Operating Expense, better- ments and taxes, to total earnings of M. C. R. R. from 1893 to 1902 inclusive, compared with ratio	

of operating expense to operating earnings of railroads in the United States and in Group 3 (embracing Mich.) as per Interstate Commerce Commission's Reports .....	819
Hinchman, Theodore H.....	822
Table showing average cost per year throughout the United States of repairs and renewals of locomotives, freight cars and passenger cars from 1895 to 1902, inclusive, as shown by Interstate Commerce Commission Statistics .....	823
Table showing amounts paid by M. C. R. R. for repairs and renewals of locomotives, freight cars and passenger cars from 1895 to 1902, inclusive, as shown by Reports to R. R. Commissioner.....	824
Thompson, Melville W. (Comp. of Stats.).....	825
Walker, James (Comp. of Stats.).....	825



**FILE COPY.**

Office Supreme Court U. S.  
**FILED**

**FEB 19 1906**

**SAMUEL H. McJANNET,**  
Clerk.

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1905.**

**No. 397.**

**THE MICHIGAN CENTRAL RAILROAD COMPANY,**  
**APPELLANT,**

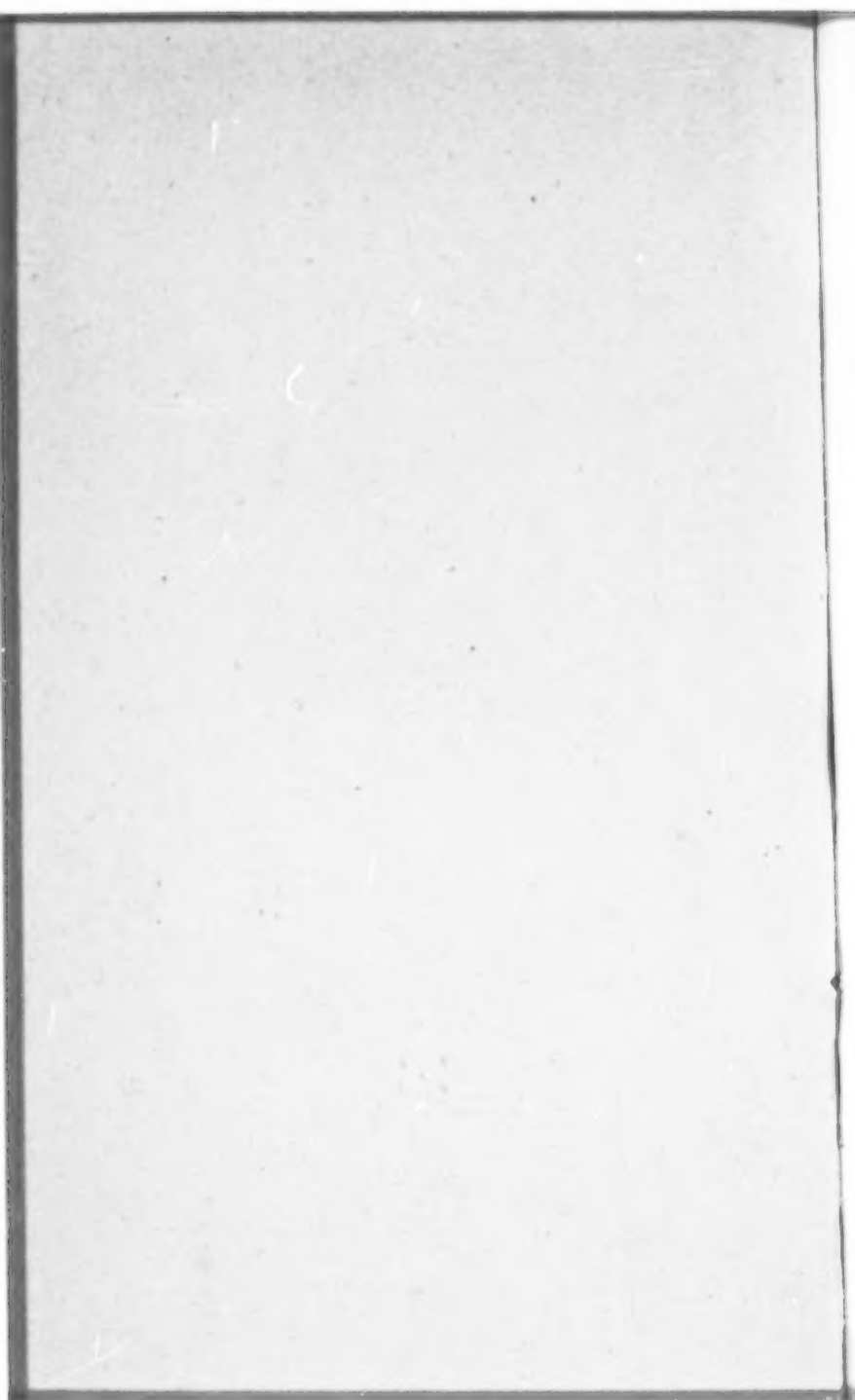
**v.**

**PERRY F. POWERS, AUDITOR GENERAL OF THE STATE**  
**OF MICHIGAN.**

**BRIEF OF THE ATTORNEY GENERAL ON**  
**THE CONSTITUTIONAL AND**  
**ASSOCIATED QUESTIONS.**

**JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 20380**

**(19,899.)**



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

---

No. 397.

---

THE MICHIGAN CENTRAL RAILROAD COMPANY,  
APPELLANT,

v.

PERRY F. POWERS, AUDITOR GENERAL OF THE STATE  
OF MICHIGAN.

---

**BRIEF OF THE ATTORNEY GENERAL ON  
THE CONSTITUTIONAL AND  
ASSOCIATED QUESTIONS.**

---

**Statement.**

The Michigan system for the taxation of the property of railroad corporations, passed in 1901, provides for its assessment by a state board of assessors. After making assessments, based on reports made by the railroad companies, and such other information as can be secured, taxes are spread thereon at the average rate imposed upon other property taxed throughout the state for state, county, township, school, and municipal purposes.

This average rate is to be ascertained from year to year, by dividing the aggregate taxes levied throughout the state for the purposes mentioned, by the aggregate assessments of the property upon which those taxes are spread.

The features in the act of 1901, and the constitutional amendments upon which it was based, which are peculiar to the system invoked, and material to the questions here involved, are the following:

1. The selection for the operation of the system, of the property of railroad, union station and depot, express, car-loaning, stock and refrigerator car corporations, etc.

2. The assessment of the property of these companies by a separate, distinct, and newly created state board.

3. The imposition upon those assessments of the average rate of taxation levied upon the other property of the state taxed for state, county, township, school, and municipal purposes.

4. That the average rate of taxation is determined by dividing the aggregate taxes levied throughout the state for state, county, township, school, and municipal purposes by the aggregate assessments upon which those taxes are levied.

5. That the deduction of debts from credits is expressly provided for in assessments of property taxed generally throughout the state, but is not in terms provided for in act 173 of 1901.

6. That equalization is had of the assessments of all property in the state except that taxed under act 173 of 1901.



## ARGUMENT.

### The Propriety of Classification in General and of the Classification Made by Act 173 of 1901.

#### I.

*In general.*—The questions of classification presented in this case are not in themselves novel. Similar questions have many times been presented to and adjudicated by this court. In respect, however, to the difference of treatment which may be made of the several classes, when once the classification is made, certain questions not specifically considered in the former cases, are presented, which we believe to be fully covered by the general principles which have been laid down.

The fourteenth amendment applies in matters of taxation, but it does not prevent classification. The state may, notwithstanding the requirement of equal protection of the laws, regulate its system of taxation in all proper and reasonable ways, and make such classifications as proceed within reasonable limits and general usage.

To sustain this proposition, the citation of cases is unnecessary, as the rule has become commonplace.

In matters of taxation the courts are moved by different considerations, and different rules apply in determining the validity of those statutes and the classifications made thereby than apply in cases of statutes and classification for other purposes.

The character of the right of taxation, the necessity for its continued existence, and the effort on the part of the courts to limit its application as little as possible, have led to rules in the application of the fourteenth amendment which are peculiar to it, and this court has, in a number of

cases, sustained statutes relating to taxation, which, had they related to police regulations or kindred subjects, would have been declared to violate the requirement of equal protection of laws. \*

*Connolly v. Union Sewer Pipe Company*, 184 U. S., 562, 563;

*American Sugar Refining Company v. Louisiana*, 179 U. S., 89;

*Cook v. Marshall County*, 196 U. S., 269, 274.

That all classification must bear a just and reasonable relation to the purposes for which it is made, is the rule applied in the application of the fourteenth amendment, but in matters of taxation, this rule has a limited application, and the discretion of the legislature is given more full effect than in cases of classification for other purposes.

In cases other than of taxation, the court must be able to see some reasonable distinction between the classes which bears an appropriate relation to the classification made. In cases of taxation this is unnecessary, and all that the court requires to sustain an enactment when brought into question as contravening that amendment, is that there be some difference in the different classes. If once it appears that there is a difference in the classes, it is left to the legislative discretion to determine whether it is sufficient to justify the classification made. In other words, in matters of taxation, the question of the propriety and necessity of classification is fully left to the legislative discretion. While the rule has never been expressed in this language, still such is the necessary effect of *Billings v. Illinois*, 188 U. S., 102. If there could be a case of classification for the purpose of taxation obnoxious to the provisions of the fourteenth amendment, that case furnishes an example of it. There, the inheritance tax statute of the state of Illinois left untaxed life estates where the remainder was to a stranger of the blood or collateral heir, and taxed the life estate where the remainder

was to a lineal descendant. The tax was a burden upon the estate of the life tenant. The only difference between the character of the interest or succession of the life tenants in the different classes, was in reference to something which did not affect, either by enlargement or restriction, their right of enjoyment of the interest received. The interest received in each case was identical. In the one case the remainder passed to persons of one description, and in the other to persons of a different description. No apparent reason existed why there should be a difference of treatment of the different life tenants. The statute was sustained in an opinion by Mr. Justice McKenna, who, in strong language, reaffirmed the right of the states to exercise practically unlimited discretion in making classification for taxation purposes.

## II.

**A. In particular.**—*The questions of classification presented in this case.*

As has been seen, act 173 selects for the purpose of its operation, the property of certain public service corporations, being railroad, union station and depot, express, car loaning, stock and refrigerator car, and fast freight line companies.

In this proceeding we are concerned only with the classification as applied to and examined from the standpoint of the railroad corporations, as the complainant in this case is, and the complainants in associated cases are, railroad corporations only.

The propriety of the selection of railroad corporations to constitute a separate and distinct class for taxation purposes has been many times questioned in this court, and without exception it has been held by it that their property, by reason of the peculiar use to which it is put, situation in which found, and conditions under which it exists, is particularly

appropriate to be made the subject of a separate and distinct system of taxation, and statutes making a separation of railroad from other property for the imposition of taxes thereon by a peculiar system have been universally sustained.

Upon this question the citation of cases seems hardly necessary, as beginning with the *State Railroad Tax Cases*, 92 U. S., 575, and continuing to *Florida, &c., R. R. Co. v. Reynolds*, 183 U. S., 480, the reports of the decisions of this court contain an unbroken line of cases sustaining the authority of the state in this regard.

In *Columbus Southern Railway Company v. Wright*, 151 U. S., 470, in sustaining a statute making a separate classification of property of railroad corporations, the court said:

"This is hardly an open question. Various modes of taxing railroad property are adopted by the different states. In some, railroad companies are taxed upon their property as a unit. In others, the road and property in each county are separately assessed, and in still other states, the whole road is assessed, and then the assessment apportioned among the several counties and towns. These and all similar modes of taxation are subject to the legislative discretion of the respective states and do not ordinarily present any Federal question whatever" (151 U. S., 478).

**B.** It is claimed that there is property of the same character, put to the same use, and in the same situation in Michigan as that belonging to railroad corporations which is owned by unincorporated institutions and by persons. While this is denied, it may not be out of place to indicate that there are differences in the character of railroad corporations, and in the privileges, rights and franchises which they enjoy as corporations, from other corporations and from persons, which would justify the state in making classification of their property upon the basis of its ownership by railroad corporations.

This question has never been squarely presented to and

passed upon by this court, but we believe that the following will be found to be sufficient difference to justify such classification:

1. The railroad corporation is endowed with certain specific rights by statute, which are not given to other institutions or corporations or to persons. Thus, the right of eminent domain is conferred upon it; it is permitted to have perpetual succession; it is given the use of a large amount of public property—the right to cross streets and highways; the power to enforce connection with other similar companies; also the right of succession to the franchises of previously existing corporations is permitted to purchasing corporations.

2. The railroad corporation also possesses elements which, in a large degree, create for it intangible values in a manner different from other corporations, institutions, or persons. Thus, these values exist more permanently with a railroad corporation; its business is, in a sense, monopolistic; it is peculiarly benefited by the growth of territory, and in its business, economies are made possible by increased density of traffic.

3. The railroad corporation is engaged in a public service, in which the state might engage, and over which the state continues to exercise the right of control.

*Cotting v. Goddard*, 183 U. S., 93-4.

This is referred to only as indicating the different character of the business which it carries, and is permitted to carry on.

4. The railroad corporation has, in a large degree, received public aid.

5. It has undertaken to permit legislation with regard to it, by organizing under a statute reserving the right to alter,

amend, or repeal. This has been held by this court to permit the application of one rule to railroad corporations, and another rule to persons engaged in carrying on a business of the same character.

St. Louis, I. M. & S. R'y Co. v. Paul, 173 U. S., 408-9.

**C.** The following additional elements surround railroad property in Michigan, and permit of its separate classification for taxation purposes:

1. It has always been assessed according to a separate and distinct system, and all Michigan railroads are incorporated under a statute which at the time of their incorporation provided for a distinct and separate system of taxation.

2. Their property is of such character, extending through numerous municipalities throughout the state, that assessment by the unit system is imperative, in order that the entire value of the railroad system be secured. In this respect, they differ from persons, and other classes of corporations, except possibly interurban street railways.

3. The rates of railroad companies are regulated by statute in Michigan, and the necessary relation which exists between income and taxation, permits of the separate classification of institutions whose rates of income are limited.

**D.** 1. Act 173 of 1901 does not, however, attempt to make any classification upon the basis of corporate or railroad ownership. It inaugurates a classification based upon a difference in use, rather than a difference in ownership, and includes within its terms only that property belonging to railroad corporations which is engaged in carrying on their railroad business.

2. In making railroad property a separate class, it does so for the purpose of the imposition of a different burden than

that imposed upon the other classes. The railroad property is especially adapted to bear state, rather than local, taxes, and when property is adapted to selection, and is selected for the bearing of a tax of a particular character, that fact in itself constitutes a sufficient basis of distinction and classification separate from other property.

*Travellers' Life Insurance Co. v. Connecticut*, 185 U. S., 364.

### III.

#### **The Property of Sleeping Car and Interurban Street Railway Companies and Unincorporated Railroads.**

The objection is made that each of these institutions possesses property of the same character, engaged in the same use, and existing under the same conditions as that of complainant.

In our principal brief we have pointed out at length the elements of difference between the property of these companies and institutions, and the business in which engaged, from complainant's, and this brief will be confined to a statement of several considerations which are regarded as controlling:

1. The complainant has not shown any injury resulting from the property of these corporations and institutions not being included in the same system with its property. Its assessment would be the same in amount if that property were exempted from taxation. With that property thrown into the class upon which taxes for state, county, township, school, and municipal purposes are levied, instead of the complainant and similar companies being injured thereby, they are in fact, materially benefited. As the property subject to general taxation for the purposes mentioned increases, the

average rate decreases, and the railroad property thereby benefits. This is conclusive of the question.

2. The authority exists in the state to grant exemption from taxation. It is true that this exemption should be based upon proper classification, although this is probably not imperative. The property of any of these specific companies or institutions might have been exempted entirely from taxation, and the complainant would have no ground of complaint, as its taxation would not be increased or decreased thereby. This question is controlled by *Missouri v. Dockery*, 191 U. S., 170, 171, in which case a citizen of Missouri having property assessed for taxation, applied for mandamus to compel a certain state board to increase assessments of railroad and other property which were assessed at a percentage of their value, while his property was assessed at its full value. It was admitted that the petitioner's tax was correct, and that the property of the railroad companies could have been exempted entirely, and the court, therefore, refused relief.

#### IV.

#### **The Deduction of Debts from Credits Granted to Property Owners Generally, but Claimed to Be Denied to Corporations Taxed Under Act 173.**

All credits assessed under the general tax law in Michigan are entitled to a deduction to the amount of the debts of the owner. Complainant insists that a similar deduction is not permitted, and was not given in the assessment for 1902, under the act 173 of 1901:

1. The record (R., 431-438) shows conclusively that credits were not included, which indicates a construction, upon the part of the board of assessors, of act 173 as authoriz-



ing it to grant the deduction (which construction was proper, in view of the fact that, that act contains no specific requirement of the inclusion of credits without deduction, and as if necessary to render the act constitutional, those credits should be eliminated, and the statute would be construed in connection with the fourteenth amendment as authorizing and requiring their elimination in the same manner as it was given under the general tax law. *First National Bank of St. Joseph v. St. Joseph*, 46 Michigan, 529), and the construction of the board of assessors would be given controlling weight in a doubtful case.

Attorney General *v. Glaser*, 102 Michigan, 405.

2. As has been stated, the purpose of act 173 was to include only railroad property. If credits are included at all, it is because they are railroad credits, and thus they are railroad property. That they are railroad property may be considered as adjudicated.

*Chamberlain v. Walter*, 60 Federal, 788-793;

*McHenry v. Alford*, 168 U. S., 651-656;

*Detroit, Grand Rapids & Western R. R. Co. v. Railroad Commissioners*, 119 Michigan, 132.

3. If any invalidity of act 173 is brought about through the inclusion of credits without deduction for debts, the act is not thereby rendered wholly unconstitutional, but only so far as it prevents the deduction. It would, therefore, be valid as an entirety in cases where there were debts to be deducted, but no deduction was claimed.

*Supervisors v. Stanley*, 105 U. S., 305.

4. The complainant has made no showing that it possesses any credits not a part of its railroad property and growing out of its railroad business, or that it appeared before the board of review and claimed a deduction on account of indebtedness. Ample opportunity for hearing, and for making

the claim for deduction upon review was given, but the fact is, that the claim for deduction on that account was not made. The result is that the deduction cannot now be claimed.

First National Bank of St. Joseph v. St. Joseph, 43 Mich., 526.

## V.

### **Is the Rate Fixed in and by the Constitution, or is it Dependent upon and Fixed by the Action of Local Municipal Officers?**

We insist that it is fixed by the constitution, and by the legislature. The legislature selects the corporations to constitute the class upon which the average rate required by the constitution automatically applies.

For very apparent reasons, the fixing of the rate is not the action of the local officials or municipalities:

1. They exercise absolutely no discretion over it. The discretion is exercised by the legislature and by the people in amending their constitution, and where the discretion is exercised, necessarily, there the rate is fixed, rather than by an officer who merely incidentally affects the rate, but has no discretion in regard to it.

2. The local officer is given no authority by act 173, or by the constitutional amendments, in regard to the rate. His action, and that of the local municipalities, is controlled by statutes in force before the present system was provided for, and would exist in exactly the same manner as now, if that system were abrogated. Can it be possible that so important a feature as fixing the rate of taxation to be imposed under the system invoked by act 173, is placed upon the local officers in any such manner?

3. The local officer acts for his local municipality; the result of his action becomes a fact of record—that fact of record is made the basis of measurement by the constitution, for the fixing of the rate to be applied to the corporation taxed under act 173. Thus, it is not the discretion of the local officer or municipality that is referred to, but the figures and facts and records which have come into existence by reason of his or its exercise of discretion for local purposes only. The case of *Trowbridge v. Detroit*, 99 Mich., 442, is in point here. In that case the rate of taxation was made to depend upon the award of a jury, and the tax was sustained.

4. If power over the rate is delegated, the delegation finds its source in the constitution, and there is no objection in the federal constitution to the delegation by a state of the authority to fix a tax rate on any body which it sees fit to constitute and endow with that authority.

5. In principle, the reference to the action of local authorities for the data to determine this rate, is no different than as if the fact, as appearing upon their records in a past year had been taken. The effect is the same. When the data is taken it has become a fact which is unchangeable.

---

The question of the rate of taxation, whether fixed in the constitution or by the legislature, is one over which that body and the people have unlimited discretion, and they are not subject to control in the courts, regardless of their motives for fixing or the basis upon which they fix a particular tax rate. The validity of taxation can in no way depend upon the mode of measurement. The rate can depend upon matters over which the legislature has no discretion, such as the receipts from interstate commerce, and the amount of property invested in United States bonds, but if the taxes are,

when levied, placed upon property properly subject to taxation, the method which was pursued in determining the rate and basis of measurement used therefor are not open to question. In the case of *Maine v. Grand Trunk*, 142 U. S., 217, 228-9, the rule is thus stated:

"The character of the tax or its validity is not determined by the modes adopted in fixing its amount for any specific period, or the times of its payment."

*Home Life Insurance Co. v. New York*, 13 N. Y., 594, 660.

## VI.

### **The Average Rate System as Compelling the Payment of Taxes Based Upon the Expenditures of Local Municipalities in Which Complainant Has no Property, and from Whose Disbursements it Receives no Benefit.**

1. A material point of consideration is, that the tax imposed by act 173, is a state tax distinct and separate from the taxes imposed by the local municipalities. The railroad is not taxed for local purposes, but bears a burden imposed by the state in lieu thereof. In adjusting the amount of this separate taxation, and in order to secure equality of burden, reference is necessarily made to the tax rate of the local municipality, and the average of all the municipalities in the state is used. The railroad is not *directly* taxed for any disbursement of the local municipalities, whether for governmental or for private purposes, and hence, it is not, by the system imposed, burdened with any taxes of any municipality from which it does not benefit.

2. The complainant's case proceeds upon the theory that its property might be taxed at the rates of the municipalities in which that property exists, constituted of taxes for governmental and private purposes.

The railroad property is different from all other property, in existing in numerous separate municipalities. There is no difference in principle, in taxing at the average in the separate municipalities in which the railroad has property, and at the average in all of the municipalities of the state. The state, having the right to tax at the rate within the municipalities in which the railroad has property, it might relinquish those taxes, and in lieu thereof tax at a rate made up of the average throughout the entire state. The case in hand is, however, different from this; having the right to tax at the rate in the local municipalities in which the railroad has property, and also having the right to subject it to separate taxes for state purposes, the state has subjected it to the separate state tax, and fixed the rate as the average of all the municipalities of the state.

3. The complainant's contention comes to this: That the state is arbitrarily confined, in fixing the tax rate, to a reference to the taxes of the local municipalities in which a particular railroad owns property, which necessarily limits the territory to a strip six miles in width on each side of the railroad's right of way, when, in fact, the railroad is directly benefited by a much wider territory than this.

4. What act 173 in substance does is to district the state for the purpose of the taxation of railroad companies; it makes of the state a single district, and uses, in determining the rate to be applied to it, the average of all of the taxes of that district. The boundaries of local municipalities become and are unimportant, and justly so, as the boundaries of the local municipalities bear no relation to the railroad company to the character of its property or business, or to the benefits which it derives from the surrounding territory.

The authority of the state to arrange taxing districts and to apportion the burden which shall be borne by property

therein, without criticism on the ground that the burdens are unequally apportioned, is clearly sustained.

*Williams v. Eggleston*, 170 U. S., 310, 311;

*Forsyth v. Hammond*, 166 U. S., 518;

*Kelley v. Pittsburgh*, 104 U. S., 78.

It is no objection to a tax that the party required to pay it receives no benefit from the particular burden.

*Thomas v. Gay*, 169 U. S., 280.

5. In fixing the average rate for the taxation of railroads the question presented was not the rate of taxation of a particular railroad, but of a fair rate for all of the railroads of the state, regardless of the municipalities in which located. Their property is all of a similar character, and it is but just and proper that all of such property of similar character should be taxed at the same rate, rather than by different rates, for the purpose of making it conform to the local assessments. To have taxed at the rate imposed by local assessments would have imposed a varying rate upon railroad property, ranging from \$8.58 to \$28.55 per \$1,000 of valuation.

6. The statement that the railroad corporations receive no benefit from disbursements made by municipalities in which they have no property, is entirely erroneous. If any particular property receives benefits from such disbursements, it is the property of railroad corporations. The reasons why they derive benefit from such disbursements are obvious—their business is drawn from all parts of the state, regardless of the fact that a particular portion of the state may not be directly reached by the line of a particular company; the prosperity and advantages of the citizens of a particular municipality inures to the benefit of the railroad, in that travel and transportation are thereby stimulated and increased.

## VII.

### The Right of Hearing Under Act 173.

1. The only discretion reposed in any officer by that act, is in the board of assessors in making the assessments. There a hearing is by the statute granted. In all other respects, including the action of the board in fixing the rate, the tax is fixed and levied by ministerial action, and as a hearing would not change the result, right of hearing is not essential.

*Hagar v. Reclamation District*, 111 U. S., 708, 709.

Where the legislature or the people by constitution, fix the rate, opportunity for hearing thereon is not essential. The power is governmental, and the subject is committed to the absolute discretion of the legislature.

*Spencer v. Merchant*, 125 U. S., 354.

The right of petition is referred to by complainant's counsel, as giving the right of hearing before the legislature, and it is objected that act 173 denies from year to year the opportunity for hearing before the legislature that is granted as to other taxes.

As full a right of hearing is accorded here as in any case of a legislative rate. The right of hearing exists:

(1.) Before the legislature which proposed the constitutional amendments for adoption.

(2.) Before the people in adopting the amendments.

(3.) Before the legislature in selecting the corporations to be made a separate class for taxation under act 173, and continues to exist at each session of the legislature, and each legislature can be appealed to for the purpose of withdrawing the system of taxation imposed by act 173 in its entirety, or certain corporations from its operation.

This existing and continuing right of hearing satisfies every requirement of the right of petition, and the legislature, by refraining from year to year from readjusting, or refixing the rate, must be considered as permitting it, and as fixing it as fully as though it directly acted upon it, by altering the corporations embraced within the system each year.

### VIII.

**That the System Imposed by Act 173 Does Not Make or Permit a Determination of the Needs of the Fund Benefited in Each Year.**

1. No requirement of the state or national constitution has been pointed out as requiring a specific determination of the needs of government, or of the fund benefited. It is true that taxes are limited to private purposes, and that on the whole, the needs of government cannot be exceeded in taxes levied, but there is no requirement that the legislature, or particularly the people by their constitution, are required to annually determine the needs of government, as bearing upon any separate class of property. If any requirement of this sort exists, it is that the entire tax levied shall not exceed the amount which can properly be used for public purposes, and if, upon any part of that tax the legislature acts annually, it must be said that there is annual legislative determination, that the amounts raised will not exceed the necessities of government.

2. Act 173 and the constitutional amendments do constitute a determination that the amount therein levied will be needed for the purposes for which levied. This is a necessary result of the constitutional and statutory provision providing a tax rate. The fixing of the rate involves the determination, not only of its amount, but of every



question embraced within it, and a state constitution declaring a tax rate is not to be set aside for any fanciful reason based entirely upon conjecture.

3. As full a determination of the needs of government in each year takes place by this system as takes place where a continuing, specified rate is designated in the statute. The designation of such a rate has always been practiced in Michigan, and is admitted by complainant's counsel to be proper. In a case of that kind the legislature does not act upon the rate from year to year, and in originally adopting it, it knows no more of the amount to be derived from the operation of the system and the application of the rate than it does in this case. If one case is a determination of the needs of government, the other is likewise so.

In either case the right of petition exists. The legislature, in permitting the rate from year to year to continue as to specified property or corporations, in substance, in each year, determines that that rate will be sufficient and appropriate, and the constitution requires nothing more.

4. The power of taxation is legislative only because the constitution has made it so. The people in their constitution might fix all of the tax rates, or might designate particular officers with discretion to fix them, and no requirement of the federal constitution would be violated. In this case, the constitution itself has fixed the rate; the legislative enactment gives it operation, and no discretion is anywhere exercised which could be said to constitute a determination of the needs of government other than by the constitution and legislature.

5. Presumptively, the amounts derived under act 173 do not exceed the needs of government, and the court certainly will not interfere with the system until this presumption has been overcome, which has not been attempted in this case.

6. The needs of government are as fully taken into consideration in act 173 as in any statute fixing a tax rate. Assuming, however, that this is not so, the system would not thereby be invalid, as measured by the fourteenth amendment, as

(a.) The same reasons do not exist in this case for the legislature's determining the needs of government, as the tax rate is fixed in the constitution.

(b.) Railroad property forms a distinct class, to which may be applied separate incidents of taxation.

(c.) The tax rate is fixed in a different manner, and the tax is for a distinct purpose, which is a basis for separate classification, the same as is a difference in the property to be taxed.

## IX.

### **Discrimination Resulting from Failure to State the Tax and its Object.**

1. The contention is that in Michigan every other tax law is required to state the tax and its object, which is not done in the case of the tax imposed by act 173.

In the *first* place: It is not essential that this statute state the tax, or its object.

(a.) The tax is fixed in the constitution, and unless the language there used is sufficient to state the tax or its object, it must be regarded as an exception to the general rule.

(b.) The provision requiring a tax law to state the tax and its object applies only to those taxes recurring annually and those imposed generally upon the entire property of the state.  
Matter of McPherson, 104 N. Y., 306, 318.

In the *second* place: The tax and its object are stated. The constitution contains every feature necessary to render certain the rate, without recourse to any discretion. This is a sufficient statement of the tax.

*People v. Mahaney*, 13 Mich., 499;  
*Trowbridge v. Detroit*, 99 Mich., 443;  
*Iverson Brown's Case*, 91 Va., 778.

In *Trowbridge v. Detroit*, a reference to a jury to fix the amount of the tax provided for in the statute, was held to properly state the tax and its object, and in *People v. Mahaney*, a law fixing an annual tax dependent upon the estimate of certain officers, was held to distinctly state the tax.

---

The assignment of error relates particularly to the violation of the fourteenth amendment, and this objection is answered by stating:

(a.) The classification made by act 173 is proper, and not to state the tax in this case would be simply a variation in one of the incidents of taxation. \*

(b.) In this case the taxes are fixed in the constitution, all other taxes being fixed by the legislature, which really calls for a different requirement in this respect.

## X.

### The Neglect to Provide for Equalization of the Property Assessed Under Act 173.

By the constitution, equalization is granted of the assessments in the several counties, upon property generally taxed. The property taxed under act 173 does not participate in this equalization:

1. In view of the Michigan system, this difference does not deprive of any right secured by the fourteenth amendment. All property in both classes is required to be assessed at its cash value, and proper proceedings of review are provided to secure uniform assessments, and the board of state tax commissioners is constituted for the purpose of supervising and equalizing all of the assessments of the state. Under these facts, the question is ruled by the case of *Cummings v. National Bank*, 101 U. S., 153, 160, in which it was held that the Ohio system which required all property to be assessed at, or in proportion to, its value, and provided boards of equalization for certain, but not for all property, was constitutional.

It is sought to distinguish this case from the case of *Cummings v. National Bank* by indicating that in Michigan the state has recognized the practice of undervaluation, and except as affecting the railroad property, has neutralized it by processes of review and equalization. We insist that in this regard the Michigan system cannot be distinguished from the Ohio system, at issue in that case, and in that case the fact that boards of equalization were in certain cases provided is equally a recognition of the prevalence of undervaluation there, and in that case the undervaluation did, in fact, exist.

The statutes which, in Michigan, seem to recognize the possible existence of assessment for taxation purposes, other than at value, were passed many years ago. In 1899 a board of state tax commissioners was provided for the purpose of bringing all property in Michigan to its cash value, for purposes of taxation, and in 1901, when act 173 was passed, about 36 per cent. had been added to the previous assessments, and all assessments in the state were practically at value. This disposes conclusively of the claim based upon legislative recognition of undervaluation.

The recognition by statute of the necessity for equalization and for review, neither before nor after act 173 of 1901, determined that there was undervaluation any more than that there was overvaluation. The process of equalization

was for the purpose of reducing all assessments to the same basis, and was equally necessary where property was over-assessed as where it was underassessed.

2. Equalization of the kind claimed to be necessary by complainant is not only not necessary, but not proper in this case. The equalization granted to the other property is not for the purpose of affecting values, but is for the purpose of equitably distributing the state tax among the several counties. So far as that tax is simultaneously spread upon different properties equalization is appropriate, but no taxes are simultaneously spread upon that property and upon that taxed under act 173. The taxes assessed under act 173 are distinct and separate, and to extend the process of state equalization, as now had in Michigan, to the property assessed under act 173 would be a meaningless proceeding.

3. The same board makes the assessment under act 173 as supervises and places final assessments upon the property assessed generally throughout the state, and the same discretion operates upon the assessments of both classes, which is in itself a process of equalization.

4. The only place in which equalization would be effective would be where it is made to affect individual assessments, and equalization of that kind is as fully accorded to property assessed under act 173 as to property generally assessed. A review for the purpose of correction of assessments in each case is granted—in the one instance in the township before a township board of review; in the other instance before the state board of assessors.

5. Complainant sustains its claim of the necessity of equalization by two cases: *Railroad & Telephone Company v. Board of Equalization*, 85 Fed., 302, and *Nashville, etc., R. R. Company v. Taylor*, 86 Fed., 168.

These are both decisions by Judge Clark, of the middle district of Tennessee, and are not authority for the proposition claimed, as

(a.) In neither of them is the question decided. In one, the court expressly limits its decision to the question of whether it possessed jurisdiction; in the other, the hearing was simply preliminary upon the granting of a temporary restraining order;

(b.) The question is only considered as bearing upon the necessity for construing the state constitution, as authorizing equalization, and as the court holds that equalization was required by the constitution, it could not have determined the system invalid, as not providing for equalization;

(c.) In that case taxes were simultaneously spread upon the different classes;

(d.) There was there no common board to supervise the assessments;

(e.) Judge Clark was overruled by the decision of Judge Taft, in *Taylor v. Louisville & N. R. Co.*, 88 Fed., 371, where the collection of a portion of the tax was restrained, and the remainder held valid;

(f.) The state constitution there passed upon was somewhat different from that of Michigan, in that it required that no one species of property from which a tax shall be collected shall be taxed higher than any other species of property of the same value.

## XI.

### Violation of the Uniformity and Cash Value Provisions of the State Constitution.

The state constitution requires all property, both that assessed under act 173, and that assessed generally, to be assessed at cash value. This we understand to mean that uni-

formity of cash value assessment was required in every class. Act 173 in no way violates the requirement.

1. Assessments of property for taxation have always been required to be at cash value. Under that requirement, deductions, such as of debts from credits, have always been permitted from one class of property, while not granted to another. When cash value was required in the assessment of railroad property, it was intended to be cash value of that character previously required and recognized by the constitution and by statute.

2. If debts constitute an element of a person's or a corporation's property, and their deduction from credits a method of valuation, then, instead of act 173 being unconstitutional, the general tax law which permits the deduction, and therefore permits assessment at something different than cash value, would be unconstitutional. The result is that the deduction of debts from credits is not a rule of value, but that assessment at cash value takes place whether that deduction is granted or not.

3. The deduction is nothing more or less than an exemption; it does not affect or enter into the value of the property which is taxed, but constitutes simply the omission of a specific item of property. This is the result of the late case of *National Loan & Investment Company v. Detroit*, 136 Mich., 451, where the statutes permitted mortgages belonging to building and loan associations to be deducted from their assessments, which was objected to as violating the requirement of assessment of property at cash value. The objection was not sustained, the court holding that the deduction was an exemption, and within the discretion of the legislature.

4. The constitution was amended for the express purpose of permitting the passage of just such an act as 173. The

Atkinson bill had been previously passed, and declared unconstitutional. The governor, in convening the legislature in extra session, for the purpose of proposing amendments to the constitution, specified that the session was called for the purpose of permitting the passage of just such an act as the Atkinson bill had been. In regard to the inclusion of credits, act 173 is exactly like that bill, and therefore is not open to objection.

5. The state court, in *Board of Education v. State Board of Assessors*, 133 Michigan, 120, determined that, in the enactment of act 173, the legislature was well within its powers.

It also determined that it was bound by the contemporaneous legislative construction of the constitutional amendments, as evidenced by act 173, and this court should be likewise influenced by that construction.

6. Though the act were defective in not providing for the deduction of debts from credits in the same manner as given in the general law, it would only be invalid in so far as it prevented the deduction, and the remainder would be valid and enforceable.

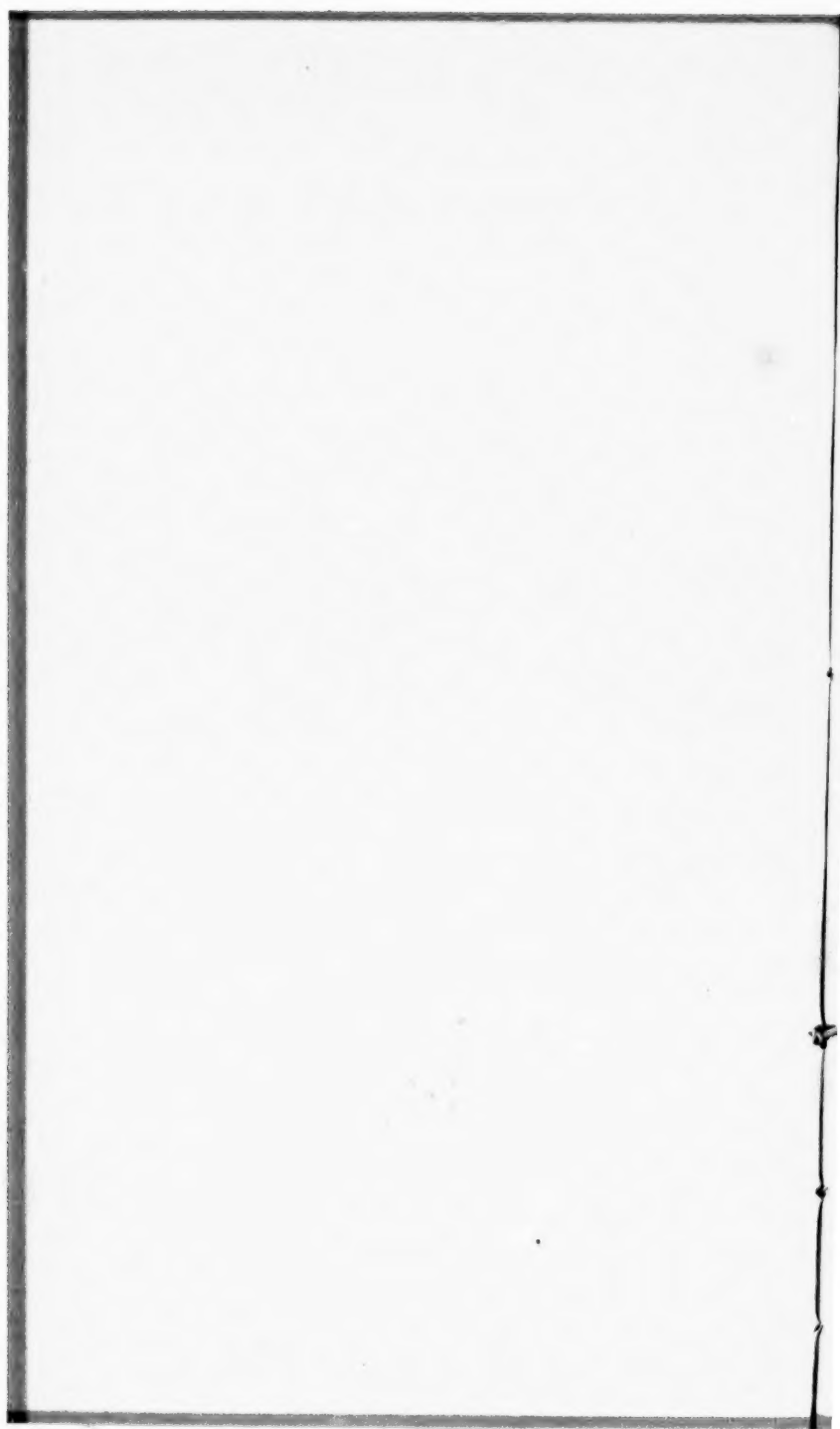
*Supervisors v. Stanley*, 105 U. S., 305.

For the reasons stated, we submit, that the classification made by act 173 is proper and sufficient, and that the differences in the incidents of taxation made by the statute, are such as could properly be made by the legislature when once the property subject thereto was properly classified, and that the judgment of the circuit court should be affirmed.

JOHN E. BIRD,  
*Attorney General of the State of Michigan.*







## SUPREME COURT OF THE UNITED STATES.

Nos. 394, 397 and 462 to 487.

OCTOBER TERM, 1905.

PERRY F. POWERS, Auditor General, &c.,  
*Appellant,*

vs.

DETROIT, GRAND HAVEN & MILWAUKEE  
 RAILWAY COMPANY,

MICHIGAN CENTRAL RAILROAD COMPANY,  
*Appellant,*

vs.

PERRY F. POWERS, Auditor General, &c.

26 other cases, numbered from 462 to  
 487, inclusive.

Now comes the said Michigan Central Railroad Company by O. E. Butterfield, its solicitor, and moves the Court for an order extending the time for argument of the above-entitled cases to 16 hours or such other time as the court may see fit and permitting three counsel to be heard on each side and a fourth counsel on the part of the Railroad Company in the case of Powers vs. Detroit, Grand Haven & Milwaukee Railway Company, and in support of this motion begs leave to state:

That both parties have appealed in the case of Powers vs. the Detroit, Grand Haven & Milwaukee Railway Company;

That all of said cases involve the validity of an act of the Legislature of the State of Michigan, which purports to provide for the taxation of the property of railroad

companies upon an *ad valorem* basis, it being claimed by the Railroad Companies that the act is in violation of the Constitution of the State of Michigan, and also in violation of the Constitution of the United States.

That said cases involve an alleged tax upon property valued upon the assessment roll in question at about \$182,000,000, which is about one-ninth of all the taxable property of the State of Michigan, and that the amount of money which the said Perry F. Powers claims to be due the State of Michigan from the said Railroad Companies for the year 1902 in addition to the sum of about \$1,500,000 already paid is more than \$1,500,000, and that the decision of said cases will determine the liability of said Railroad Companies to pay a substantially similar amount for the years 1903, 1904 and 1905; so that there is really involved in said cases upwards of \$6,000,000, in addition to the sum already paid by said Railroad Companies, to say nothing of large penalties which the Act imposes for non-payment.

That said Act provides that the rate of taxation to be imposed upon the property of the Railroad Companies shall be the average rate of taxation levied upon property in the State other than that included in the Act in question upon which *ad valorem* taxes are assessed for state, county, township, school and municipal purposes, and that in order to fully state the facts upon which the decision must depend, it will be necessary to describe at length the entire taxing system of the State of Michigan, including in such description the system of taxation applicable to railroad property and also the system of taxation applicable to other property, which will necessitate a reference to a large number of statutes of the State of Michigan, and also a number of decisions of the Supreme Court of that State.

That it is claimed by the Railroad Companies that if the Act is held valid, there should be a reduction of some 18 per cent of the taxes imposed; amounting, in all the cases, to more than half a million dollars, because it is alleged that the other property by reference to which the average rate is computed was not in the year in question assessed at its cash value, but at only 82 per cent thereof, while the railroad property was assessed at its cash value, and the record contains over 300 pages of testimony which it is claimed by the Railroad Companies tends to show such under-valuation of such other prop-

erty in the State of Michigan, to all of which it will be necessary to refer upon the argument in order to fully apprise the Court of the facts upon which the decision of this branch of the case must rest.

That the testimony on the part of the Railroad Companies in respect to the under-valuation of such other property is not contradicted, but the Auditor General undertook to meet it, by showing that the railroad property assessed upon the tax-roll in question, is also under-valued to the same or a greater extent. Upon this point, the record contains about 500 pages of testimony and exhibits, to all of which it will be necessary to refer upon the argument in order to fully apprise the Court of the facts upon which the decision of this branch of the case must rest.

That upon the question of valuation of railroad property, the figures in respect to the different railroads vary and it will be necessary upon the argument to call the attention of the Court to the facts in respect to each several railroad company of the 27 involved in the cases.

That the appeal of the said Powers in the case of the Detroit, Grand Haven & Milwaukee Railway Company involves questions entirely different from any of those above referred to. It is claimed by the Railroad Company in that case that the Act in question does not apply to it because of its special charter, which special charter, it is claimed by the Auditor General, has been repealed. The record contains a large amount of testimony bearing upon this point, and upon the argument of the questions involved in this appeal, counsel will be required to refer to a large number of Michigan Statutes and several decisions of the Supreme Court of that State, in order to fully apprise the Court of the facts upon which the decision must rest.

The appeal of the Auditor General in the case of the Detroit, Grand Haven & Milwaukee Railway Company will be argued on the part of the Railway Company by counsel who took no part in the argument of the questions raised in the other cases.

For this reason, it is believed by counsel that it will be impossible to make a fair presentation of the cases in less time than 16 hours, and it is respectfully submitted that 16 hours should be allowed for the argument and that three counsel should be permitted to discuss the

cases on each side, and that in addition thereto at least one counsel should be permitted to argue for the Railroad Company in the appeal of the Auditor General in the case of the Detroit, Grand Haven & Milwaukee Railway Company.

*W. E. Bullard*

*Of Counsel for all of the Railroad  
Companies involved in said cases.*

Business Address:

Room 23, Michigan Central Depot,

Dated this 9th day of December, 1905.

Detroit, Michigan.

# Supreme Court of the United States

Nos. 394, 397 and 462 to 487.

OCTOBER TERM, 1905.

PERRY F. POWERS, Auditor General, &c.,  
*Appellant,*

vs.

DETROIT, GRAND HAVEN & MILWAUKEE  
RAILWAY COMPANY,

MICHIGAN CENTRAL RAILROAD COMPANY,  
*Appellant,*

vs.

PERRY F. POWERS, Auditor General, &c.

26 other cases, numbered from 462 to  
487, inclusive.

Sir:—

Please take notice that on Monday, the eighteenth day of December, 1905, I will apply to the said Court, by motion, to extend the time for argument and permit three counsel to be heard on a side and a fourth counsel to be heard for the Railroad Company in No. 394.

You are herewith served with a copy of said motion.

Dated this 9th day of December, 1905.

.....*W. E. Dutton*.....

*Solicitor for the Michigan Central  
Railroad Company, and of Coun-  
sel for the Railroad Companies  
in the other Cases.*

To the

HON. JOHN E. BIRD,

*Attorney General of the State of Michigan,  
Solicitor for said Powers.*

STATE OF MICHIGAN,  
COUNTY OF WAYNE,      SS.

....., being duly sworn,  
deposes and says that he served the foregoing motion and  
notice upon John E. Bird, the Attorney General of the  
State of Michigan, solicitor for the said Perry F. Powers,  
by depositing a copy thereof, enclosed in a sealed enve-  
lope, properly addressed to him at his office in the City  
of Lansing, Michigan, in the United States postoffice in  
the City of Detroit, Michigan, with postage fully pre-  
paid thereon, on the ..... day of December,  
A. D. 1905.

.....

Subscribed and sworn to before me,

this ..... day of December, 1905.

.....  
*Notary Public, Wayne Co., Mich.*

I hereby accept service of the foregoing motion and no-  
tice and consent to the granting of said motion.

Dated, December 12<sup>th</sup> 1905.

.....  
*John E. Bird*  
.....  
*Solicitor for said Perry F. Powers.*



# Supreme Court of the United States.

No. 397.—OCTOBER TERM, 1905.

The Michigan Central Railroad Company, Appellant, <i>vs.</i> Perry F. Powers, Auditor General of the State of Michigan.	}	Appeal from the Circuit Court of the United States for the Western District of Michigan.
---	---	---

[April 2, 1906.]

This suit was brought in the Circuit Court of the United States for the Western District of Michigan to restrain the respondent, the Auditor General of the State, from enforcing against the appellant the provisions of Act No. 173 of the Michigan laws of 1901, an act to provide for the assessment of the property of railroad and certain other companies, for the levying of taxes thereon by a State board of assessors and for the collection of such taxes. The taxes involved in the suit are those for 1902, resulting from the first assessment under the statute. Prior to the year 1900 the constitution of Michigan contained, in Art. XIV, the following sections applicable to taxation:

"SEC. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from banking, railroad, plank road and other corporations hereafter created.

"SEC. 11. The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.

"SEC. 12 All assessments hereafter authorized shall be on property at its cash value.

"SEC. 13. The legislature shall provide for an equalization by a State board in the year one thousand eight hundred and fifty-one, and every fifth year thereafter, of assessments on all taxable property except that paying specific taxes.

"SEC. 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

In that year sections 10, 11 and 13 were amended so as to read as follows:

"SEC. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value, by a State board of assessors and for the levying and collection of

taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific State taxes in section one of this article.

"SEC. 11. The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes.

"SEC. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a State board, on all taxable property, except that taxed under laws passed pursuant to section 10 of this article."

This change in the constitution was doubtless owing to a decision of the Supreme Court of the State, (*Pingree v. Auditor General*, 120 Mich. 95,) of date of April 26, 1899, holding unconstitutional an act passed in 1881 in respect to the assessment and taxation of telegraph and telephone lines. An act 19 of 1899, passed March 15, 1899, and commonly called the "Atkinson bill," was subject to the same objections as the act of 1881 and was evidently regarded as equally unconstitutional. Indeed, though not directly involved in that suit, it was referred to in the opinion of Mr. Justice Montgomery.

The act in controversy (Pub. Acts 1901; Act No. 173) provides that the Board of State Tax Commissioners shall constitute a State Board of Assessors, who are to assess the railroad and certain other corporate property in the State. Section 5 contains the following:

"SEC. 5. The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: *Provided, however*, That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities in

which the same may be situate. The term company, corporations or associations, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast freight line company, and any and all other corporations subject to taxation under this act. The term 'property having a situs in this State' shall include all the property, real and personal, of the corporations enumerated in this act, owned, used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined."

By sections 6 and 7 the several corporations are required to furnish information as to various matters of fact bearing on the matter of assessment. By section 8 property is to be assessed at its "true cash value" on the second Monday of April of each year, and for the purposes of the assessment the board of assessors is authorized to make personal inspection of the property, to take into consideration the reports filed under the act, and such other evidence as may be obtainable bearing thereon. In respect to the property of railroads running partly within and partly without the State, the board is directed to be guided in respect to the matter of taxation of property within the State by the relation which the number of miles of main track within the State bears to the entire mileage of the main track both within and without the State. By section 10 the board is required to meet at the capitol at Lansing on the third Monday of December, and continue in session so long as may be necessary, not later than January 15 next thereafter, for the purpose of reviewing the assessment roll, and any person or company interested has the right to appear during said period and be heard by the assessors, and they are authorized on such application, or on their own motion, to correct the assessment or valuation. Sections 11 and 12 prescribe the method for fixing the rate of tax, the purpose being to impose upon the railroad property the average rate of taxation levied upon other property upon which ad valorem taxes are assessed. This method is accurately described by counsel for the railroad company in these words:

"The new and peculiar feature of the statute lies in the application to corporate property of a special rate of tax, known as the 'average rate'; which is derived by the following process: The total ad valorem taxes for all purposes, State, county, city, township, village and school district, paid by property in Michigan which is taxed otherwise than under Act 173, are divided by the total assessments of such property, whether made by one or another assessor, and the quotient resulting from this process of division is the rate of tax applied to corporate property under Act 173."

By section 16 the taxes collected from corporations under this act are to "be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State

debt, in the order herein recited, until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund."

After a full hearing upon pleadings and proofs the Circuit Court entered a decree dismissing the bill, 138 Fed. Rep. 223, whereupon the plaintiff appealed directly to this court, under section 5 of the Circuit Court of Appeals act.

Mr. Justice BREWER delivered the opinion of the Court.

The unconstitutionality of a statute may depend upon its conflict with the constitution of the State or with that of the United States. If conflict with the State constitution is the sole ground of attack, the Supreme Court of the State is the final authority, *Merchants' Bank v. Pennsylvania*, 167 U. S. 461 and cases cited in the opinion, while in the other case the ultimate decision rests with this court. The validity of this act has not been directly presented to or determined by the State court, but the first attack by the parties interested is made in the Federal court and by this suit, and conflict with both constitutions is alleged. Undoubtedly a Federal court has the jurisdiction, and when the question is properly presented it may often become its duty to pass upon an alleged conflict between a statute and the State constitution, even before the question has been considered by the State tribunals. All objections to the validity of the act, whether springing out of the State or of the Federal Constitution, may be presented in a single suit and call for consideration and determination. At the same time the Federal courts will be reluctant to adjudge a State statute to be in conflict with the State constitution before that question has been considered by the State tribunals. Especially is this true when the statute is one affecting the revenues of the State, and therefore of general public interest. *Coulter v. Louisville & Nashville R. R. Co.*, 196 U. S. 599-609. And this reluctance becomes more imperative when the statute has been before the highest court of the State and a decision rendered upon the assumption that it is valid, and this, although the direct question of validity was not presented nor determined.

In the case at bar the rate of taxation imposed upon the railroad and other corporate property is the average rate of taxation upon other property subject to ad valorem taxes, and that average rate is ascertained by dividing the total tax levy on all such property by the value of the property. In *Board of Education v. State Assessors*, 133 Mich. 116, the following case arising under the statute was presented (p. 117):

"This is an application for a mandamus. It sets out, in substance, that the State Board of Assessors, in levying the tax upon the railroad property of this State, has assumed to fix the rate of taxation by dividing the total tax levy on all property other than railroad property

by the value of such other property as determined by the defendant board, by adding to the actual assessed value of such property as fixed by the local assessors and by the Board of State Tax Commissioners, acting under the authority of the law relating to the assessment of taxes, the sum of \$296,748,142, thus making the aggregate divisor in determining the rate of taxation that much in excess of the assessed valuation, thereby reducing the rate to be levied upon the railroad property of the State, and thus reducing the amount which the relator would receive as its proportion of the tax assessed against railroad property by a very substantial sum."

This application was sustained, the court holding that the State Board of Assessors had no power to increase the value as returned to them by the local assessors and Board of State Tax Commissioners, and saying (p. 119):

"A fair reading of this language of the statute, we think, leads to the conclusion that the board of assessors has imposed upon it the duty, ministerial in character, of determining by a computation from *data*, which the law provides for placing in its hands, the rate of taxation which other property in the State is subjected to, as it appears by assessment rolls which are supposed to contain an accurate and true assessment of all property at its full cash value."

While this case did not directly determine the constitutionality of the statute, a fair implication is that it was not regarded as obviously in conflict with the State constitution, for in that event the court would scarcely have taken time to consider the validity of proceedings under its authority.

We, therefore, proceed to inquire whether the provisions of this act and the method of taxation therein prescribed are open to any constitutional objection. We have had frequent occasion to consider questions of State taxation in the light of the Federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the Circuit Court in this case (p. 232):

"There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the Fourteenth Amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways, nor to compel the States to adopt an ironclad rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice. *Bell's Gap Railroad Company v. Pennsylvania*, 134 U. S. 232; *Giozza v. Tiernan*, 148 U. S. 657, 662; *Adams Express Company v. Ohio*, 165 U. S. 194, 228; *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283; *Billings v. Illinois*, 188 U. S. 97; *Merchants Bank v. Pennsylvania*, 167 U. S. 461; *Kentucky Railroad Tax Cases*, 115 U. S. 321; *Home In-*

*insurance Company v. New York State*, 134 U. S. 594; *Gulf, Colorado & Santa Fe Railroad Company v. Ellis*, 165 U. S. 150; *Clark v. Titusville*, 184 U. S. 329; *American Sugar Refining Company v. Louisiana*, 179 U. S. 89; *New York State v. Barker*, 179 U. S. 279; *Charlotte etc. Railway Company v. Gibbes*, 142 U. S. 386; *Travelers Insurance Company v. Connecticut*, 185 U. S. 364; *Kidd v. Alabama*, 188 U. S. 730; *Turpin v. Lemon*, 187 U. S. 51; *Florida etc. Railroad Company v. Reynolds*, 183 U. S. 471."

The first and principal matter of attack is the "average rate." It is contended that the fixing of the rate of taxation is a legislative function; that in ascertaining the average rate by the method described there is no exercise of the legislative judgment, but that it is determined by the action of the various local assessing and taxing boards, who, though charged with no duty of inquiry as to the necessities of the State or the proper rate of taxation of railroad property, are in fact the only officials exercising any discretion and judgment.

There might be a question whether, even if there were a clear delegation of legislative functions to other departments of the State government, it would be void under the Federal Constitution. Whatever, in view of the distinct grant in the Federal Constitution to the President, Congress and the Judiciary of separately the executive, legislative and judicial powers of the nation, may be the power of Congress in the delegation of legislative functions, a very different question is presented when the restrictions of the Federal Constitution are invoked to restrain like action in a State. Crimes against the nation must be prosecuted by indictment, yet a State may proceed by information. Suppose a State by its constitution grants legislative functions to the executive, or to the judiciary, what provision of the Federal Constitution will nullify the action? Will the grant work an abandonment of a Republican form of Government, or be a denial of due process, or equal protection?

But it is unnecessary to enter into a discussion of this question, for in the case at bar there is no abandonment by the legislature of its functions in respect to taxation. The statute prescribes as the rate of taxation upon railroad property the average rate of taxation on all other property subject to ad valorem taxes. It provides the most direct way for ascertaining such average rate, deducing it from a consideration of all the other rates. No authority is given to the local assessors to apply their judgment to the question of the railroad rate. Their authority in respect to the matter of taxation is precisely the same as it was before and independently of this statute. Their duty is to act according to their judgments in respect to local taxes committed to their charge. When they have finished their action, taken, as it must be assumed to have been, in conscientious discharge of the duties assigned, from it by a simple mathematical calculation the average rate of taxation is determined. If the legislature should be convened after they have finished their action and then prescribe



the average rate thus mathematically deduced as the rate of railroad taxation, no question could be made of its validity. It would be obviously a legislative determination of the rate of taxation. Is it any the less a legislative determination that it assumes that the various local officials will discharge their duties honestly and fairly, with reference to local necessities, and independently of the effect upon the railroad rate, and directs that the mathematical computation be made by a board of ministerial officers, and thus made shall become the railroad rate of taxation? Why is it necessary that the legislature be convened to add its formal approval of the integrity of the action of the local officers? May it not entrust the mathematical computation to the State Board of Assessors, and if so, may it not likewise act upon the assumption that the local assessors will discharge their duties with an eye single to those duties and irrespective of the effect upon the railroad rate? It is true there is a possibility that some local board may be actuated by other than a sense of duty to the community for which it is acting and have a thought of the ultimate effect upon the railroad rate. There is always a possibility of misconduct on the part of officials, but legislation would be seriously hindered if it may not proceed upon the assumption of a proper discharge of their duties by the various officials. And it must be remembered that, in view of the vast multitude of local taxing boards, (as stated in one of the briefs of counsel for appellant there are about 1,300 local assessment districts,) the action of any single board could have but little influence upon the railroad rate. Beyond the assumption that these local officers will act from a sense of duty is the further fact that their action affects directly and principally the special communities for which they act, and that, generally speaking, is a sufficient guarantee. As said by Mr. Chief Justice Marshall, in *M'ulloch v. Maryland*, 4 Wheat. 316, 428:

"The only security against the abuse of this power, is found in the structure of the Government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation."

And again, in *Providence Bank v. Billings*, 4 Pet. 514, 563:

"This vital power may be abused; but the Constitution of the United States was not intended the corrective for every abuse of power which may be committed by the State governments. The interest, wisdom and justice of the representative body, and its relations with its constituents, furnish the only security where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally."

*Maine v. Grand Trunk Railway Company*, 142 U. S. 217, is worthy of consideration on this question of legislative determination. The legislature of Maine graded the rate of an excise tax imposed upon railroads by the amount of their gross transportation receipts, and provided that when a railroad was partly within and partly without the State the gross receipts charge-

able to the road within the State should be ascertained on the mileage basis. The court below held that as the Grand Trunk Railroad was partly within and partly without the State of Maine, the imposition of the tax was a regulation of commerce, and therefore in conflict with the exclusive power of Congress over interstate and foreign commerce; and rendered judgment for the company.

But this court, reversing that judgment, held that the reference to the receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a reasonable conclusion as to the amount of tax which should be levied, saying (p. 229):

"If the amount ascertained were specifically imposed as the tax, no objection to its validity would be pretended. And if the inquiry of the State as to the value of the privilege were limited to receipts of certain past years instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its character."

See also *Home Insurance Company v. New York*, 134 U. S. 594, and cases cited in the opinion. Of course, a passenger on the Grand Trunk Railroad knew that the fare he was paying was increasing the gross receipts, and therefore indirectly affecting the amount of the tax collectible under the statute. But it was not to be assumed that he would travel and pay fare with that object in view. No more can it be assumed in the present case that the local taxing officers, although knowing that an increase of their local tax levy will increase the tax rate upon railroads, will be led by that knowledge to forget their single duty to the community for which they are acting. No one pays money for the mere sake of compelling others to pay. Some personal advantage must be intended. No more will local tax officers levy a tax upon their neighbors, those who have placed them in position, for the mere sake of increasing the tax burden upon railroads, especially when the local levy is not followed by an equal increase in the amount of the burden cast upon railroads and but a trifling fraction of that increase inures, either directly or indirectly, to the benefit of the taxpayers of the locality. The total value of other property in Michigan subject to ad valorem taxes was, according to the record, in the neighborhood of \$1,500,000,000. A tax levy in the city of Detroit for local purposes of \$1,500,000 would, therefore, increase the rate of taxation on railroad property only one mill, and that increase would profit Detroit but little, as the railroad tax is appropriated for State purposes only.

It may be laid down as a general proposition that where a legislature enacts a specific rule for fixing a rate of taxation, by which rule the rate is mathematically deduced from facts and events occurring within the year and created without reference to the matter of that rate, there is no abdi-



cation of the legislative function, but, on the contrary, a direct legislative determination of the rate.

Again, it seems more reasonable that the average rate should be fixed by this mathematical computation from the other rates already established than for the legislature to prescribe in advance that which it may hope will be such rate. In the one case the exact average is determined; in the other an estimate is made, which may turn out to be more or less than the average.

While the peculiar method of ascertaining the average rate prescribed by this statute may be new, yet the application of an average rate to the taxation of railroads is not new, nor confined to Michigan. See § 1, Chap. 64, Public Statutes and Session Laws of New Hampshire of January 1, 1901, section first enacted in 1878; Revised Laws of Mass. (1902) vol. 1, Chap. 12, Sec. 93, p. 227; Chap. 14, Secs. 37, 40, pp. 266, 268, incl., taken from laws of 1864, 1865 and 1880; Revised Statutes of Missouri, (1899,) vol. 2, pp. 2175, 2176, Secs. 9363, 9364; Laws of Wisconsin, (1903,) Chap. 315, Secs. 7 to 14, incl., pp. 496, 7, 8 and 9; *Railroad v. The State*, 60 N. H. 87; *The State ex rel. Brown v. The Missouri Pacific Ry. Co.*, 92 Mo. 137; *Chicago & Alton R. R. Co. v. Lamkin*, 97 Mo. 496; *The State ex rel v. Metropolitan Street Ry. Co.*, 161 Mo. 189, 199.

We have thus far assumed that there was equity and justice in applying to railroad property the average rate of taxation imposed upon other property. But this assumption is challenged. For instance, the Chicago and Northwestern Railroad Company's property is situate in the upper peninsula of the State of Michigan—

"and yet the average rate of tax applied to its property depends upon, and increases with, the taxes raised on all the counties of the 'Lower Peninsula' of Michigan, and in all the cities, towns, villages and school districts of those counties, for purely local purposes. If Detroit spends \$10,000,000 for local government, the Northwestern Railway Company has to pay proportionately more tax on its property in Northern Michigan than if Detroit's tax for local government were \$5,000,000; and, beyond that, if Detroit spends \$1,000,000 or \$5,000,000 for purely domestic or private enterprises, such as gas works, water works, street railways, parks, baths, libraries, etc., the Northwestern Railway's tax on its property (though wholly outside of Detroit—in the 'Upper Peninsula') is proportionately larger on that account.

\* \* \* \* \*

"It may well be that (as respects the immediate point) the unity of railroad property would justify a statute requiring a railroad to pay taxes to the State at a rate derived by averaging the taxes, State and local, paid by others in the same taxing jurisdiction; but the question before the court is whether it can be made to pay a tax directly dependent upon, and measured by, the local taxes of counties, cities, towns, villages and school districts where it has no part of its property and no office. Such a plan operates to tax the railroad because of the expenses (public and private) of local communities whose benefits it does not enjoy."

But these considerations appeal mainly to the discretion of the legislature, and do not make against its power. Unless there be some specific provisions in the State constitution compelling other action the State may treat its entire territory as composing but a single taxing district, and deal with all property as within the district and subject to taxation accordingly. There is no magic in county organization, no inherent necessity of dividing the State into small taxing districts. Frequently railroads are separated from other property, assessed by a State board, and the taxes collected therefrom applied to the general purposes of the State. Sometimes, it is true, a portion of the taxes thus collected is distributed *pro rata* to the counties along the lines of the roads, but the power of the State to apply the taxes from railroad property to only State purposes cannot be doubted, and is often exercised. If it may take all the taxes received from railroad property and apply it to general State purposes, and, to that extent, relieve counties in which there is no railroad property from their contribution to the support of the State, it has equal power to say that the average rate of taxation shall be determined, not by the rates upon other property in the immediate localities in which the railroads are located, but by those upon all property wherever situated in the State. We do not mean to hold that cases may not arise in which enforcing this method of taxation works such injustice to a railroad as to call for judicial interference. But we do hold that the mere fact that all the property in the State is taken into account in determining the average rate does not carry with it such proof of injustice and inequality as to compel the courts in all cases to strike the latter down. From the cases that are before us involving this statute it appears that there are many railroad companies in the State, and we may fairly take judicial notice of the fact that the State is traversed in almost every direction by railroads. And while it is possible that there may be a county or two without one yet it is an exception, and to hold that for each railroad the average rate must be determined from the property in the localities immediately contiguous or through which its road passes might well introduce into the matter of taxation a confusion and inequality resulting in far greater injustice than the uniformity established by the present system.

Further, it must be borne in mind that the taxes collected from railroads in Michigan are, by sec. 16 of the act, applicable to State purposes, and while it is doubtless true that the appropriation of these taxes to State purposes diminishes the tax burden which will fall upon other property, yet the case presented is one in which the legislature, taking a class of property, imposes upon it through State authorities a State tax for strictly State purposes. That, so far as the restraints of the Federal Constitution are concerned, it is within the power of a State to separate a particular class of property, subject it to assessment and taxation in a mode

and at a rate different from that imposed upon other property, and apply the proceeds to State rather than to local purposes is not open to question. *Kentucky Railroad Tax Cases*, 115 U. S. 321, is directly in point. By the legislation of Kentucky railroad companies and their property were separated from other property, subjected to different means and methods for purposes of taxation, and upon this the court said (p. 337):

"But there is nothing in the constitution of Kentucky that requires taxes to be levied by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."

See also *Pittsburgh etc. Railroad Company v. Backus*, 154 U. S. 421; *Florida Central etc. Railroad Company v. Reynolds*, 183 U. S. 471; *Coulter v. Louisville & Nashville Railroad*, 196 U. S. 599.

That no provision is made for a general equalization of railroad with other property in the State does not vitiate the assessment. See *Cummings v. National Bank*, 101 U. S. 153, in which the question was distinctly presented and determined, the court saying (p. 161):

"While it may be true that this system of submitting the different kinds of property subject to taxation to different boards of assessors and equalizers, with no common superior to secure uniformity of the whole, may give opportunity for maladministration of the law and violation of the principle of uniformity of taxation and equality of burden, that is not the necessary result of these laws, or of any one of them; and a law cannot be held unconstitutional because, while its just interpretation is consistent with the Constitution, it is unfaithfully administered by those who are charged with its execution. Their doings may be unlawful while the statute is valid."

While there may be no provision for an equalization of railroad with other property, it will be perceived that the statute names the time and place for the sessions of the assessing board, gives to any person or company interested the right to be heard, and also authorizes the board to correct the valuation. So that it cannot be objected that the railroad companies are precluded from a full hearing on the matter of valuation; and, as has heretofore been said by this court, one hearing is sufficient to constitute due process.

Other questions are discussed by counsel in their briefs, but in view of the exhaustive and well-considered opinion of the trial judge, with the general trend of which we concur, it is unnecessary to further extend this discussion. It is sufficient to refer to that opinion for a consideration of those questions. We have noticed those which seem to us paramount and controlling.

It is charged in the bill that there was a systematic undervaluation of other property in the State which resulted in denying to this plaintiff the equal protection of the law. The trial court found against this charge. It is enough to say that generally we accept the finding of a trial court upon a question of fact when the testimony respecting it is conflicting. It may also be said that a legislature is not bound to impose the same rate of tax upon one class of property that it does upon another. As it may exempt all of one class so it may impose a different rate of taxation. It is sufficient if all of the same class are subjected to the same rate and the tax is administered impartially upon them.

*Affirmed.*

Cases on the docket, numbered from 462 to 487, inclusive, are suits brought by different railroad companies against this appellee, and are submitted on the same record. The same decree will be entered in each of them.

True copy.

Test :

*Clerk Supreme Court, U. S.*

